

TIME TO GET THE LEAD OUT

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Planning to renovate, repair, or repaint any property you manage or to hire someone else to do it? If so, read on. Effective April 1, 2010, the EPA has enacted strict new guidelines which must be followed when any work will potentially disturb lead paint in a property. Generally, the new law will require management companies to hire companies that have a “certified renovator” supervising the work or, if the work is done by your own staff, to have staff members become certified renovators if they are to oversee the work. The following article is intended to provide an overview of the new regulations to assist property managers in understanding its mandates.

Who does the law apply to?

Anyone that manages property for a fee is subject to the new regulations.

When does the law apply?

First of all, the regulations apply to any property built prior to 1978. If the property was constructed prior to 1978, then the new regulations apply if you (a) are replacing any window; or (b) the work will disturb six (6) square feet or more of any interior wall space; or (c) the work will disturb twenty (20) square feet or more of exterior wall space. The only exception is where you have a lead inspection showing that the area being disturbed does not contain any lead paint.

What does the law require?

If the work is to be performed by an outside contractor, you must confirm that they are certified renovators under the EPA’s Renovation, Repair and Painting (RRP) Rules. A copy of their certificate should be obtained prior to any work being performed and maintained in your files.

If the work is to be performed by your maintenance staff, the following rules apply:

1. The effected resident(s) must be provided with a pamphlet entitled “Renovate Right” no more than sixty (60) days before the work is performed. If the work is being performed in the common areas, all residents must be provided with the pamphlet. This pamphlet is available at www.epa.gov/lead/pubs/renovaterightbrochure.pdf. The resident(s) must also sign a “Pre-Renovation Form” to confirm they have received the pamphlet. This form is also available at that website.

2. The effected work must be supervised by a member of your staff that is a “certified renovator”. This person is required to have taken a one (1) day course, paid the required fee, and passed the required exam. Certifications are good for five (5) years.
3. The certified renovator will confirm that the work is performed in compliance with the RRP rules, including, the following:
 - a. Warning signs must be posted in the effected area;
 - b. Residents must be excluded from the work areas;
 - c. Dust caused by the work must be contained by specific measures, including covering all personal property, erecting barriers with plastic sheeting and tape, etc.
 - d. Work must be performed following applicable procedures to reduce dust, including no scraping, use of certain equipment, moistening areas, etc.
 - e. Work must be cleaned up to confirm no dust remains. This includes using HEPA vacuums, visual inspections, and finally, a “white glove test” where a clean white will be compared to a white card to confirm the area is clean and free of dust.

It is important to note that the regulations provide significant detail on how the work is to be performed to reduce or eliminate exposure to lead paint. Staff members who complete the EPA course to become certified renovators will gain the expertise to determine the proper manner in which to perform the work. Therefore, you should defer to their expertise when performing the work.

Are there any exceptions to this Rule?

There are several exceptions to these Rules. The primary exceptions are as follows:

1. Emergency Renovations: In the event of an unexpected event which requires immediate repair to avoid further loss or injury, the work may be performed without complying with the foregoing policy. However, a certified renovator is still required to inspect the work and must still adhere to the clean-up and inspection procedures once the emergency work is completed.
2. Lead Free Areas: In the event you have written certification from a licensed deleader confirming that there is no lead paint in the effected area, you do not have to follow these procedures. Note, however, that you must have a written report specifically confirming that there is no lead paint in the effected area.

3. Disturbed Area: As noted, if the intended work will disturb less than six (6) square feet of a painted area/wall, you do not have to comply with these terms. However, this exception considers the work in the entire apartment for a period of thirty (30) days in the aggregate. In other words, the fact that you repair a four (4) square foot area one day, and another four (4) square foot area the next week, does not mean you do not have to comply. If the areas which are being disturbed in any thirty (30) day period will add up to more than six (6) square feet, the Rules apply.
4. These regulations do not apply to work being perform by a tenant or by the owner of a dwelling which s/he occupies.

Are their any penalties for failing to comply?

Believe me, you don't want to know. Let's just say that the fines for failing to comply with these regulations are staggering and could possibly constitute an unfair and deceptive trade practice thereby entitling the resident to treble damages and attorneys fees. As such, it is very important to be ready and trained for this new law.

For a more detailed discussion of the new regulation, the National Association of Realtors has prepared a wonderful presentation which can be reviewed at www.realtor.org/government_affairs/lead_paint_property_managers

Conclusion

Clearly, the EPA's new regulations will have a serious effect on property managers. Not only will you need to be notifying tenants of virtually any interior job, but you need to have at least some, if not all, of your staff attend a course to become a certified renovator. It is important to note, however, that the new regulations do not require the deleading or testing of apartments. Rather, they seek to avoid potential exposures from work being performed in apartment by presuming the existence of lead. Finally, as always, you should consult your attorney and/or licensed deleading contractor for further details.