

LANDLORD INSTRUCTIONS FOR CONTESTING THE COMMISSIONER'S ORDER FROM THE HEALTHY HOMES PROGRAM

New York City Department of Health & Mental Hygiene – Healthy Homes Program/Lead Poisoning Prevention

If you wish to contest the findings of the Department of Health and Mental Hygiene (DOHMH) Healthy Homes Program (HPP) Commissioner's Order, you **must** follow these instructions.

STEP 1: SUBMIT NOTICE OF INTENTION TO CONTEST:

- To contest a Commissioner's Order from the Healthy Homes Program (hereafter called the Commissioner's Order), landlords must notify DOHMH with a signed notice of the intention to contest, by mail, fax, or hand delivery. **This notification must be received by the HHP by the third day AFTER the receipt of the Commissioner's Order.**

STEP 2: SUBMIT DOCUMENTARY EVIDENCE:

- Submit documentary evidence by mail, fax, or hand delivery to support the contestation of violation(s). **Documentary evidence must be received by the HHP by the fifth day after the receipt of the Commissioner's Order. The documentary evidence should:**
 - list the violation(s) being contested
 - provide a rationale for the contestation and detail the evidence supporting that rationale

EXAMPLES OF DOCUMENTARY EVIDENCE INCLUDE:

A. Improper operation of the XRF

You may contest the Commissioner's Order by providing evidence that:

- the inspection was not done at the abatement level of 0.5 mg/cm², and/or
- there were problems with the calibration readings for the machine

B. Paint chip sampling – Note: You must follow the HUD Guidelines¹ for paint chip sampling.

All paint chip samples collected for analysis must be taken between the parallel red LEAD PAINT stamps on the violation in question.

You may contest the XRF lead test results of building components by submitting all of the following documents:

- a chain of custody for paint chip samples taken from the contested violation(s)
- a copy of the laboratory analysis of the paint chip samples with lead content supplied in area concentration (mg/cm²). If lead content cannot be supplied in area concentration and is provided in percent by weight, an explanation detailing why area concentration could not be used must be provided
- a copy of EPA certification of the lead risk assessor or lead inspector who took the paint chip samples
- a copy of the EPA certification of the laboratory which analyzed the paint chip samples
- an affidavit signed by the landlord (see attached sample)
- an affidavit signed by the EPA-certified lead risk assessor or EPA-certified lead inspector (see attached sample)

C. New or renovated building documentation

You may contest the Commissioner's Order if the building is new construction built after 1978 **or** if a building was gut renovated after 1978. Documentary evidence must include:

- the certificate of occupancy for the building issued from the New York City Department of Buildings; and/or
- documents which outline the scope of work **that was completed** in the gut renovation that indicates that all painted surfaces were removed, replaced, and/or enclosed.

Additional Notes:

- All contested violations and room locations must be described EXACTLY as they appear in the Commissioner's Order.**
- The Child ID number and the Commissioner's Order number must be on each page of the documents submitted.
- All 'days' in these instructions refer to calendar days.
- Falsification of records or documents may result in fines and/or criminal prosecution.
- All documents must be submitted to:
**Healthy Homes Program
125 Worth Street, 6th Floor, Box CN 58
New York, NY 10013
Attn: Contested Violations
Fax: (347) 396-8926**

¹ U.S. Department of Housing and Urban Development (1997) Chapter 7 Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing
Last Updated: July 19, 2019

**AFFIDAVIT OF LANDLORD CONTESTING COMMISSIONER'S ORDER BY SUBMITTING
ANALYSIS OF PAINT CHIP SAMPLES**

New York City Department of Health & Mental Hygiene – Healthy Homes Program

RE: **Child's ID:** _____

Order No.: _____

Address where paint chip samples were taken (include Apt. No.): _____

STATE OF NEW YORK)
COUNTY OF _____)

I _____, of _____, being duly sworn,
name of building owner or managing agent name of corporation or business
depose and say:

1. I am the owner or managing agent of _____ .
building address
2. I hired _____ to perform paint chip sampling
name of EPA-certified lead risk assessor or EPA-certified lead inspector
on building components at the above address.
3. I instructed the aforementioned EPA-certified lead risk assessor or EPA-certified lead inspector to follow the HUD Guidelines¹ and the procedures outlined below.
4. All paint chip samples were obtained in accordance with following procedures:
 - a) before paint was removed, plastic sheeting was placed under the areas where the sampling was to be done, and
 - b) the areas of the dwelling sampled were the same building components indicated in the Commissioner's Order, and
 - c) all paint chip samples collected for analysis were taken between the parallel LEAD PAINT stamps on the violations in question, and
 - d) all holes created by the paint chip sampling in this dwelling were immediately sealed, using one coat of primer and two coats of paint, to prevent exposure to children.

Signature: _____

Sworn to before me this _____ day of _____ 20____

NOTARY PUBLIC

¹ U.S. Department of Housing and Urban Development (1997) Chapter 7 Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

AFFIDAVIT OF EPA-CERTIFIED LEAD RISK ASSESSOR OR EPA-CERTIFIED LEAD INSPECTOR WHO PERFORMED PAINT CHIP SAMPLING FOR CONTESTATION OF COMMISSIONER'S ORDER

New York City Department of Health & Mental Hygiene – Healthy Homes Program

RE: **Child's ID:** _____

Order No.: _____

Address where paint chip samples were taken (include Apt. No.): _____

STATE OF NEW YORK)

COUNTY OF _____)

I _____, EPA certification # _____,

being duly sworn, depose and say:

1. I am an EPA-certified lead risk assessor or EPA-certified lead inspector.
2. I was hired by _____ to perform paint chip sampling on building components at the above address.
name of building owner or managing agent
3. Paint chip sampling was done in accordance with HUD Guidelines¹ and the procedures outlined below.
4. All paint chip sampling was done in accordance with following procedures:
 - a) before paint was removed, plastic sheeting was placed under the areas where the sampling was to be done, and
 - b) the areas of the dwelling sampled were the same building components indicated in the Commissioner's Order, and
 - c) all paint chip samples collected for analysis were taken between the parallel LEAD PAINT stamps on the violations in question, and
 - d) all holes created by the paint chip sampling in this dwelling were immediately sealed, using one coat of primer and two coats of paint, to prevent exposure to children.

Signature: _____

Sworn to before me this _____ day of _____ 20_____

NOTARY PUBLIC

¹ U.S. Department of Housing and Urban Development (1997) Chapter 7 Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing