

# LANDLORD INSTRUCTIONS FOR CONTESTING THE COMMISSIONER'S ORDER FROM THE HEALTHY HOMES PROGRAM/LEAD POISONING PREVENTION

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/Lead Poisoning Prevention (HPP/LPP) 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/Lead Poisoning Prevention (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/LPP 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/LPP 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  $1.0 \text{ mg/cm}^2$ , and/or
- there were problems with the calibration readings for the machine

### B. Paint chip sampling – Note: You must follow the HUD Guidelines<sup>1</sup> 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 ( $\text{mg/cm}^2$ ). 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/Lead Poisoning Prevention**  
**125 Worth Street, 6<sup>th</sup> Floor, Box CN 58**  
**New York, NY 10013**  
**Attn: Contested Violations**  
**Fax: (347) 396-8926 or (646) 632-6004**

<sup>1</sup> 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: March 5, 2014

**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/Lead Poisoning Prevention

**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 Guidelines<sup>1</sup> 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**

<sup>1</sup> 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/Lead Poisoning Prevention

**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 Guidelines<sup>1</sup> 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**

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