Property Owners’ Responsibilities to Address Lead-based Paint Under Local Law 1 of 2004

NYC Department of Housing Preservation and Development

This presentation is for informational purposes only and is not intended as legal advice or as a statement of the law. For more information about what is required, see the Multiple Dwelling Law, Housing Maintenance Code, and the Rules of the City of New York.

Updated September 2017
Agenda

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PART I:
BACKGROUND
Background on Lead

» Lead is a substance used in many products to make them stronger. In many countries, it is still used in gasoline, paint, pottery, and candles.

» Lead is poisonous when ingested. Mainly, it affects brain development in young children but it can also poison adults.

» In the US, childhood lead poisoning occurs most often when lead is ingested as dust from paint. Children ingest lead dust when they put their hands and toys in their mouths, or ingest paint directly by chewing on paint chips or painted surfaces.
New York City first outlawed the sale of lead-based paint starting January 1, 1960; the United States outlawed the sale of lead-based paint starting January 1, 1978.

Since 1981, New York City has had laws addressing the repair and remediation of lead-based paint hazards.

The current law addressing lead-based paint remediation—Local Law 1 of 2004— is enforced in multiple dwellings (buildings containing 3 or more residential dwellings) by HPD.
PART II:  
KEY TERMS
“Lead-based paint”

Local Law 1 sets forth:
» Approved methods of testing paint for lead content
» The threshold of lead content beyond which paint must be treated as ‘Lead-based Paint’

Local Law 1 definition, excerpt:
"Lead-based paint” shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer.
“Peeling Paint and Underlying Conditions”

Paint that is scaling, flaking, chalking, peeling, or is such that is not adhered to the surface is all considered to be “peeling paint” by Local Law 1.

An “underlying condition”, such as an active water leak, may cause paint to peel.

A landlord seeking to fix lead-based paint problems will have to address both the damage to the paint AND the underlying condition.
Examples:
Peeling Paint, “alligatoring” pattern
Examples of Peeling Paint w/ one type of Underlying Condition: “Deteriorated Substrate”
More examples of Peeling Paint w/ Underlying Condition
“Substrate”

The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Knowing the type of substrate is important when testing a painted surface for lead content.
Weather exposure and friction from opening and closing often cause paint on windows to deteriorate more quickly. Lead-paint dust also collects in windows. Lead-Based Paint remediation rules have a particular focus on the treatment of windows.

Local Law 1 Definition: **Window**: the non-glass parts of a window, including, but not limited to any window sash, window well, window jamb, window sill, or window molding.
Window Components

- SILL
- JAMB
- APRON
- CASING
- WELL
Types of Surfaces

» Certain types of surfaces pose a larger risk of deterioration. Local Law 1 has special definitions of and provisions for these surfaces.

» Main examples (more on next slides):
  > Friction Surface
  > Impact Surface
  > Binding Surface
  > Chewable Surface
“Friction Surfaces”
Lead-painted surfaces that abrade, scrape or bind
“Impact Surfaces”
Surfaces deteriorated due to impact from other surfaces
“Binding Surfaces”
Peeling paint at door frame or windows
Window side jambs are also considered binding surfaces
“Chewable Surface”

» Any window sill reachable by a child, whether intact or deteriorated.

» Any other edge or protrusion that shows evidence of being chewed.

» Any other edge or protrusion that the tenant has notified the owner has been chewed.
“X-ray Fluorescence (XRF) Analyzer”

An XRF machine uses radioactive material (cobalt 57) to identify the level of lead in milligrams of a square centimeter of a surface.
“Remediation”

» Local Law 1 definition: “Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of health and mental hygiene.
"Safe Work Practices"

Practices to minimize the health risks caused by Lead-based Paint disturbed during construction – to protect both workers and tenants/residents.

Example: site enclosure.
“Interim Controls” and “Abatement”

Approaches to addressing LBP Hazards

» **Abatement** – a ‘permanent’ solution: the removal of the building component, the removal of the paint itself, or the long-lasting – at least 20 years – enclosure or encapsulation of lead-based paint hazards.

» **Interim Controls** – a ‘temporary’ solution

Depending on the surface, particular approaches may be required by law. For instance, Interim Controls are not allowed for Friction, Impact or Chewable surfaces.
Abatement Methods - examples

» Removal of the building component,
» Removal of the paint itself
» Enclosure – fastening of wood or other durable materials over lead-based paint surfaces using nails or screws.
» Encapsulation – process that focuses on applying a liquid coating to cover lead-based paint surfaces
Interim Controls Techniques - examples

Interim Controls:

» Dust Cleanup

» “Paint stabilization” – complete process including fixing the damaged substrate and any underlying conditions, treating the surface and repainting the surface

» Treating a surface – example: rehang a door to prevent scraping

» Wet scraping – particular method for smoothing a surface for repainting that involves wetting the surface to reduce dust creation while scraping loose paint
“Dust wipes”

» Used to ensure that proper cleanup has taken place.

» A tenant should not be allowed to reoccupy any area where work has been done unless dust wipe sample clearance has been completed for that area.

» The wipe with the dust is sent to an independent laboratory for analysis.

» Required under Local Law 1: Final clearance and dust wipe sampling of the floors, window wells, window sills, adjacent room w/in ten feet of work area and samples in line of travel from exit to work area.

» The dust wipe sampler is also required to mix unused ‘blank’ wipes in the samples sent to the lab as an additional check to ensure the wipe materials were not previously contaminated.
PART III: PROPERTY OWNERS’ RESPONSIBILITIES UNDER LOCAL LAW 1
Local Law 1 of 2004: The Basics

» Lead-based paint is difficult and expensive to test for and to remove completely from a residence.
» LBP safety laws address the most dangerous Lead-based paint conditions, aka “hazards” – peeling paint, dust, impact surfaces, binding surfaces etc.
» Having LBP in a building in itself is NOT a violation under Local Law 1.
» But having LBP HAZARDS in an apartment with a child under 6 IS a violation.
» Local Law 1 requires landlords to make efforts to identify lead-based paint hazards in their buildings.
» Local Law 1 also requires the use of approved methods to remediate any hazards, and to ensure the work-site is cleaned up.
Local Law 1: Basic Checks and Balances

» Local Law 1 regulates both the lead remediation work AND the way the site cleanup is monitored.

» The company that conducts the remediation, the company that collects dust wipe samples, and the lab that analyzes the samples must all be independent from each other.

» Each company involved in the remediation process needs proper certification. In addition, key workers also must be certified.
Specific Owner Responsibilities Under Local Law 1 of 2004

Under Local Law 1, owners have significant legal liability if children are lead-poisoned due to paint, especially if they fail to meet the following legal obligations:

» Make Apartments Lead Safe on Turnover
» Identify apartments with children under 6 and investigate – annual notice requirements
» RemEDIATE Lead-Based Paint Hazards Using Appropriate Work Practices (in response to owner investigations and violations)
» Do All Repairs and Renovations Using Safe Work Practices
» Keep records
Specific Owner Responsibilities

Lead Safe on Turnover

In all pre-1960 multiple dwelling units and pre-1960 private dwelling units that are not owner-occupied, when an apartment becomes vacant, property owners are required to:

» Remediate lead hazards
» Make floors, sills and wells cleanable
» Remove or permanently cover all lead on friction surfaces of doors, door frames and windows
» Use safe work practices
» Lead Safe on Turnover

Turnover requirements must be followed regardless of whether the prior occupant or the new occupant has a child under six. In this way, lead-based paint hazard reduction will affect all apartments over time.

Conducting lead-hazard reduction work during turnover is the safest, fastest and cheapest time to treat potential lead-based paint hazards.
Specific Owner Responsibilities

Notify Tenants and Investigate

» Obligation applies to
  » Pre-1960 multiple dwellings
  » Post-1960 to pre-1978 buildings where the owner knows that there is lead-based paint

» Must investigate dwelling units where children under 6 reside, and common areas, to find peeling paint, chewable surfaces, deteriorated subsurfaces, friction and impact surfaces.

» The investigation must be conducted annually, and more often if the owner knows of a condition that may cause a lead hazard, or if the occupant complains about such a condition.
Specific Owner Responsibilities

Notify Tenants and Investigate

- At Lease up and Renewal
  - Must inquire if child under 6 will live there
  - Lease must contain notice of owner’s responsibilities
  - Must provide pamphlet on lead paint hazards
Specific Owner Responsibilities

Notify Tenants and Investigate

- Annual Notice
  - Must send notice between January 1 and January 16 each year inquiring as to presence of child
  - Tenant must respond by February 1
  - If no response, owner must inspect between February 16 and March 1 to determine presence of child
  - If no access must notify DOHMH
  - If there is a child, then must inspect to determine lead hazards
  - Must inform tenant of results of investigation
Specific Owner Responsibilities

Remediate Lead Hazards

Owners must prevent the reasonably foreseeable occurrence of lead hazards and remediate them, and the underlying defects that may cause lead hazards, using safe work practices

- In apartments
- In common areas

- In pre-1960 buildings, paint is presumed to be lead paint.
- For a list of EPA-certified Lead Remediation companies, call 1-800-424-LEAD and ask for the list of EPA Region 2 Contractors.
- In addition, Landlords should consult NYC DOHMH’s list of contractors who have been barred in NYC from submitting documents related to LBP Remediation or Abatement work, available online here: https://www1.nyc.gov/site/doh/health/health-topics/lead-poisoning-information-for-building-owners.page
Remediate Lead Hazards

- A Lead Hazard is any condition that causes exposure to lead contaminated dust from:
  - Peeling lead based paint
  - Deteriorated sub-surfaces
  - Friction surfaces
  - Impact surfaces
  - Chewable surfaces
Specific Owner Responsibilities

Correct Lead Hazards

- Owner must correct lead hazards that are found
  - Must use workers trained in lead safe practices
  - Must use third party for clearance dust test
  - Must provide clearance dust test results to tenants
Specific Owner Responsibilities

**Use Approved Methods of Lead Abatement / Paint Remediation**

The EPA-certified Firm you hire must use approved methods and protocols to do all work.

Approved work methods for Lead Paint Remediation are a complex topic. **For more detail, consult Local Law 1, and HUD guidelines.** Here are some examples of important issues:

» Interim Controls should never be used on chewable, binding or friction surfaces.

» If encapsulation or Interim Controls are used, the Landlord must periodically monitor and evaluate the repairs.

» Some forms of Abatement are prohibited, such as dry scraping or open flame burning of paint.
Specific Owner Responsibilities

Repair and Renovation

- For ANY construction work of more than 2 sq ft in a pre-1960 multiple dwelling, or in a 1960-77 multiple dwelling where the owner has actual knowledge of lead paint:
  - In a unit with a child or
  - In the common areas of a building with a child
    - Must use workers trained in lead safe practices
    - Must use third party for clearance dust test
    - Must provide clearance dust test results to tenants
    - Must relocate if necessary
  - If the work is more than 100 sq. feet or involves removal of 2 or more windows, must also file notice with DOHMH
  - This rule applies to ANY and ALL construction work that disturbs paint.
Repair and Renovation

- Emergencies
  - The law specifically exempts from coverage work immediately necessary to safeguard against danger to life, health or safety.
  - Examples: disaster, fire, structural collapse, cascading water, lack of utilities or other emergency conditions.
Specific Owner Responsibilities

Record Keeping

▪ Owners who perform work pursuant to Local Law 1/2004 must
  ❖ Retain all records relating to such work for ten years from the completion of the work
  ❖ Make records available to HPD upon demand
  ❖ Transfer records to the owner’s successor in title

Owners should also maintain records of inspections, turnover inspections and remediations and documents submitted to HPD for legal liability reasons.
PART IV: HPD Enforcement

» Complaints and Inspections
» Notice of Violation and Post-certification violation removal
» Exemptions
HPD Enforcement Background: Basic Process for ALL Inspections

» An Inspector conducts an Inspection, usually based on a complaint from 311.
» The Inspector writes a violation after observing a violation of the Housing Maintenance Code or Multiple Dwelling Law.
» The Notice of Violation is mailed to the agent or owner, with separate deadlines for correcting the problem and for certifying the correction to HPD.
» The owner should correct and certify correction to HPD. Certification is FREE.
» Landlords who miss these deadlines are subject to civil penalties as outlined on the NOV for failure to correct.
» Landlords who miss certification deadlines also must file for a Dismissal Request to get the violation removed, which involves fees.
Local Law 1 requires HPD to affirmatively look for lead-based paint hazards regardless of the reason for the inspection.

HPD also has a more stringent process, involving additional paperwork and mandatory reinspection, for allowing landlords to certify correction of LBP violations.

In the next slides, we will review these processes in detail.
Whenever a tenant files a complaint with 311 for HPD, 311 asks if there is a child under 6 residing in the household.

If the answer is yes, an Inspection team with an XRF analyzer will conduct a lead-based paint inspection in addition to inspecting the condition the tenant has complained about.

If the complaint condition involves a painted surface in any way, the complaint is a lead-based paint complaint. HPD must attempt to inspect within 10 days.

A lead-based paint HPD inspection is a room by room, surface by surface inspection of the entire apartment.

If peeling paint tests positive for lead, a lead based paint violation will be issued.
Whenever Inspectors enter a residence without a 311 complaint indicating a child under 6, they will ask the tenant if a child under 6 resides in the apartment. If the answer is yes, the Inspectors conduct a line of sight lead-based paint inspection. Since the inspectors did not know ahead of time there would be a child under 6 and therefore did not bring an XRF machine to test immediately for lead-based paint hazards, they still conduct a lead-based paint inspection and will refer any peeling paint conditions for a second inspection visit for XRF testing. If testing cannot be completed because of no access a PRESUMED lead based paint violation will be issued.
Focus on: Violations and Order Numbers

» HPD labels different kinds of violations with 3-digit Order Numbers.

> Most HPD Lead-based paint violations fall under two order numbers:
  + 617: tested positive for lead
  + 616: presumed to be lead-positive

> Violations document the room and components that are peeling and either have tested positive (617) or are presumed to be lead (616).

> The important difference for owners is that only presumed (616) violations can be contested.
Notice of Violation

Order Number: 22-165006

Violation Description:

An asterisk (*) following an order number denotes a pest requiring violation (B6L 4-527-J).

Important: (1) The correction date listed above does not apply to heat and hot water violations and other violations of Subchapter II, Article 2 of the Housing Maintenance Code. (2) Read the instructions on the back of this notice carefully.

[Diagram of building layout with specific details marked for inspection]
Contestations

» If a building owner has received a 616 Presumed Lead-based Paint Violation after Inspectors failed to gain access, but believes there is no Lead-based Paint at the site in question, the owner has two possible options for contesting the violation:
  > Supply the C of O if the building was newly built (NB) after 1977 to contest the 616.
  > Pay for XRF testing of the violation components and submit the test results with the contestation form.

» Must be submitted 5 days before the correction date.

» Contestation forms are included with the original NOV mailing. Review these documents for more information about how to contest.
Exemption

» Owners can apply to be **exempted** from the presumption that their building contains LBP after hiring a firm to do extensive testing throughout the building.

» **Primary benefit: of exemption**
  > Not required to annually notify tenants re: LBP and inspect re: presence of child

» **NOTE:** HPD Code Enforcement Inspectors will still conduct LBP inspections and issue LBP violations in ‘exempted’ buildings. Exemptions cannot help an owner answer 617 violations.

» Visit HPD’s website for exemption application.
Postponements

» Owner may seek two postponements (extensions) for completing the work of 14 days each. HPD may grant longer postponement if there is pending capital work.

» Forms specifically designed for requesting postponement of a lead-based paint hazard violation correction date are enclosed with the Notice of Violation(s) and are also available online at nyc.gov/hpd or by calling (212) 863-5678.
Clearing Violations: Overview

To clear Lead-Based Paint violations:
• Violation must be corrected properly.
• All necessary documents must be submitted with either the timely Certification of Correction or with a Dismissal Request (including fee).
• HPD must reinspect the violation and find the condition corrected.
As with all other violations, HPD will send a Notice of Violation to the landlord when a violation is written. Both tenants and owners also receive a detailed notice about any XRF testing that takes place, whether a violation is issued or not.

For Lead-based Paint violations, the landlord must submit a certification to HPD within 21 days of the violation issuance.

As discussed earlier, specific work practices must occur to correct lead-based paint hazards. Proof that these practices were followed must be provided to HPD with the certification, including:

> An EPA certified lead abatement firm to remediate peeling paint conditions, using lead-safe work practices
> Dust wipes done to confirm that no lead-dust remains after the work is finished

All Lead-based Paint certifications have to be inspected by HPD.

As mentioned before, if a 616 was issued, the owner also has an option to contest the violation (have XRF tests conducted to prove that there is no lead in the paint).
Documents required for timely certification:

**HPD Forms:**
- Completed certification form from the back of the NOV.

**Documentation of Remediation:**
- REMEDIATION FORMS: Sworn statement(s) made by the individual(s) who performed the work to correct the lead-based paint hazard violation(s) stating that the work was performed in accordance with §27-2056.11 of Article 14 of the Housing Maintenance Code and §11-06 of Title 28 of the Rules of The City of New York.
- A copy of the EPA certification for the firm that performed the work to correct the lead-based paint hazard violation(s).

**Documentation of Dust-Wipe Sample Clearance:**
- A copy of the lead-contaminated dust clearance tests from a laboratory certified by the New York State Environmental Laboratory Approval Program.
- An affidavit from the individual who took the surface dust sample, verifying the date the sample was taken and indicating the address/apartment where the sample was taken.
- A copy of the certificate of training for the individual who performed the lead-contaminated dust clearance test(s).

- Samples of these documents can be found online at [www.nyc.gov/hpd](http://www.nyc.gov/hpd), search for Lead-Based Paint.
After Certification Deadline has passed

- Once the violation is past the certification deadline from the NOV, the owner must provide an affidavit, called an AF5, in addition to all of the previously-mentioned documentation required for certification.
- Because the initial NOV deadline was missed, the owner must pay an additional fee to file a Dismissal Request (DR) to arrange for the mandatory HPD reinspection.
- Note that the DR must be submitted to the Code Borough Office, whose Inspectors will conduct the Reinspection, while the completed Lead paperwork must go to the Code Lead Unit.
- For work that was done prior to the passage of Local Law 1 in 2004, processes and requirements are different. Consult the HPD website or contact HPD for more info.
- To get more detailed information about violations which are still open but past the certification period, see HPDONLINE for the Overdue Lead Report.
1. Visit nyc.gov/hpd and scroll down

Search for your building
Search for your building, and then click “Overdue Lead Paint Violation Correction” on the left side of the screen.

The chart below will help you determine what is needed for lead-based paint violations.

- The column labeled **Affidavit & Docs Req** advises if additional documentation is required to dismiss the violation.
  - If **NO**, the documents were already submitted by the certified and HPD has not been able to review the documentation. However, an inspection by HPD is needed. (See the INSPECTION STATUS column).
  - If **YES**, affidavits about how the work was completed need to be submitted to HPD. An Affidavit form AND all supporting documentation is required. Instructions on the **AF-3** and **AF-5** forms can be found in the documentation. If work was completed before August 1, 2004, submit one affidavit for all violations corrected in a single apartment which require the same affidavit.

- The column labeled **Inspection Status** indicates whether an inspection by HPD has already been performed.
  - If the status is **Inspection Completed**, you will see the date prior to which the work was done: prior to the Inspection Completed date, follow the Required (below).
Once HPD has reinspected to ensure the work has been done, HPD must mail a copy of the final inspection report and status to the occupant and owner.
HPD’S Emergency Repair and Environmental Hazards Division will attempt to conduct the repair using a private EPA contractor.

» The City is subject to laws governing procurement, contracting, and wages that may make such work significantly more expensive than the price the owner could obtain themselves.

» The City will bill the property owner through the Department of Finance for the cost of the emergency repair plus related fees and/or for the cost of sending a contractor to attempt to make repairs.

» If the owner fails to pay, the City will file a tax lien against the property. The tax lien will bear interest and may be sold and/or foreclosed to collect the amount owed.

» HPD’s Housing Litigation Division may also seek civil penalties in Housing Court. For penalty information, see the back of the Notice of Violation.
PART V: ADDITIONAL AGENCY: DOHMH
DOHMH

Local Law 1 also gives the New York City Department of Health and Mental Hygiene (DOHMH) jurisdiction over Lead-based Paint issues.

DOHMH tests children for elevated lead levels in their blood. DOHMH also responds to complaints about dust hazards caused by construction and can issue violations for failure to follow safe work practice. **Call 311 to file a complaint with DOHMH.**

If tests show a child has been exposed to unsafe levels of lead, DOHMH will investigate the child’s entire environment, including their school and residence, for Lead-based paint, and issue a Commissioner’s Order to Abate (COTA) for any hazards found. Contact DOHMH for more info on their enforcement process after a COTA is issued.

Local Law 1 exempts private dwellings from HPD Enforcement, but DOHMH may still issue a COTA for these residences.
DOHMH Comm. Order to Abate

HPD Enforcement

» If DOHMH finds Lead-based paint in a Multiple Dwelling, HPD has additional responsibilities.

- When a COTA is issued for a lead-poisoned child in a multiple dwelling, within 15 days HPD must require the owner to submit to HPD all records of notification and investigation within 45 days.

- If records show there may be lead hazards in other units with children under age 6, HPD will inspect all such units within 10 days.

- If the owner does not provide the records, HPD must inspect child occupied units in 45 days to determine if there are any lead violations.
HPD Website Lead-based Paint Info – nyc.gov/hpd

Maintenance Requirements

In New York City, renters and landlords have rights and responsibilities to maintain residential property. These rights and responsibilities are outlined in many codes and laws, which HPD enforces, including the New York City Housing Maintenance Code and New York State Multiple Dwelling Law.

- Housing Information Guide Notice
- Heat and Hot Water
- Mold
- Pests
- Lead-Based Paint
- Smoke and Carbon Monoxide Detectors
- Window Guards
- Basement and Cellar
HPD Code Enforcement Lead Unit:
(212) 863-5501

(For information on how to clear Lead Violations)

HPD Code Enforcement Lead Unit Address:
HPD, Lead-Based Paint Inspection Program, 94 Old Broadway, 7th Floor, New York, NY 10027.

(For submitting completed Lead NOVs and paperwork)
CONCLUSION:

Addressing Lead-Based Paint Hazards Properly and Proactively Will:

• PROTECT CHILDREN.
• PROTECT YOU FROM LEGAL LIABILITY RESULTING FROM LEAD-POISONING.
• ENSURE YOU ARE COMPLIANT WITH THE LAW AND AVOID VIOLATIONS, CIVIL PENALTIES AND ENFORCEMENT ACTION.

QUESTIONS?