



THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
DIVISION OF CODE ENFORCEMENT  
94 Old Broadway, 7th Floor New York, NY 10027

## Lead-Based Paint Exemption Frequently Asked Questions

### 1. What is an exemption?

Local Law 1 of 2004 established a presumption that paint in buildings with three or more residential units built prior to January 1, 1960 (referred to as “pre-1960” going forward), where a child under the age of 6 lives or routinely spends 10 or more hours per week, is lead-based paint. Due to that presumption, the law requires that property owners of these buildings complete specific activities related to those units and the residents that occupy them. These activities include an annual notice and investigation, turnover work that addresses lead paint and surface-specific abatement, and a requirement that safe work practices be used.<sup>1</sup> In the near future, additional requirements related to testing all apartments completely for lead-based paint and providing annual information to the New York City Department of Housing Preservation and Development (HPD) about lead-based paint activities will also be in place.

A property owner of a building to which the presumption applies can be **exempted** from performing annual notices and inspections and turnover work, as well as the new requirements, if they apply for and are granted an exemption. An owner must provide specific documentation to HPD to demonstrate that the apartment unit or building is free of lead-based paint, has been made free of lead-based paint through permanent removal, or has been made lead safe using approved containment and / or encapsulation materials.

### 2. How does an owner apply for exemption?

Owners must use the HPD [Application for Exemption](#) form available on the HPD website. The Application for Exemption provides detailed instructions for the owner. An exemption requires, at the minimum, that an EPA-certified lead inspector or risk assessor conduct testing for lead-based paint according to federal methods and rules. This test requires the use of an XRF Analyzer, which is a machine used by the EPA-certified individual to test the actual lead content in the paint. Based on that test, the owner may need to hire an EPA-certified lead abatement firm to safely remove, contain, or enclose the lead-based paint. Owners should read the application instructions completely and thoroughly.

There is a second set of instructions in the Application for Exemption that should be shared with the EPA-certified individual who does the testing and, if abatement is needed, the EPA-certified lead abatement firm to ensure that they understand how to conduct the testing and work as well as the documentation required to complete the application. The completed application form must be signed

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<sup>1</sup> Note that these required activities also generally apply to units in multiple buildings built before 1978 where the owner has actual knowledge of the presence of lead-based paint.

by the owner and notarized. The application also includes contractor affidavits that must be completed, signed, and notarized. Currently, HPD requires that the application and supporting documentation be submitted by mail or in person; this information is available on the application.

An owner can apply for an exemption only for: (1) a single individual unit, (2) a single building, or a (3) a single apartment complex (a complex means multiple buildings built at the same time and under the same management and maintenance). The application instructions explain the requirements of each.

Effective December 9, 2019, HPD may grant two types of exemptions from the presumption of lead-based paint to multiple dwellings built before 1960: **Lead Free** or **Lead Safe**. The owner must indicate on the application which exemption status they are applying for and the documentation provided must accurately support the application.

### **3. What does it mean to apply for a Lead Free exemption status?**

As mentioned above, the EPA-certified lead inspector or risk assessor hired by the owner is required to test painted surfaces for lead and should provide the owner with a report which indicates the positive and negative surfaces. To be granted the Lead Free exemption, the property owner must demonstrate that each tested surface and component is free of lead-based paint. This can be demonstrated in two ways: (1) the surfaces or components test free of lead-based paint on the initial testing report, or (2) the surfaces or components test positive for lead-based paint and the owner hires an EPA-certified lead abatement firm to permanently remove the paint or component that tested positive for lead.

For an owner to demonstrate that they have successfully completed either of the two Lead Free approaches mentioned above, the owner must provide specific documentation, detailed in the application instructions, received from their EPA-certified lead inspector or risk assessor and, if anything tested positive, the EPA-certified lead abatement firm who performed any abatement work on those positive surfaces.

### **4. What does it mean to apply for a Lead Safe exemption status?**

To be granted the Lead Safe Exemption, the property owner must demonstrate that the testing identified lead-based paint and the lead-based paint was temporarily encapsulated or contained using approved abatement methods, rather than removed. Other areas might have been fully abated as Lead Free but if one area was abated using encapsulation or containment, the entire application can only be approved as Lead Safe.

Encapsulants are coatings or rigid materials that rely on adhesion to a lead-based painted surface and are not mechanically fastened to the surface. Encapsulation may not be used to abate surfaces which are chewable or subject to binding, friction, impact, or heat, such as doors, windows, or radiators. HPD also only allows the use of encapsulants that meet specific industry standards and those are outlined in the application instructions.

The term "contained" means that every surface containing lead-based paint has been covered, enclosed, and sealed with sheetrock or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface.

For an owner to demonstrate they successfully completed a Lead Safe approach, the owner must provide specific documentation, detailed in the application instructions, received from their EPA-certified lead inspector or risk assessor and the EPA-certified lead abatement firm.

For both encapsulation and containment, although not exposed, lead-based paint remains present in the dwelling. The encapsulants and / or containment will require ongoing monitoring of these surfaces to ensure the abatement has not been compromised. This compromise could occur, for example, as a result of a leak. Therefore, as a part of the application, the owner must also submit a monitoring plan.

#### **5. Can sheetrock over a lead-based paint covered surface be done as a form of abatement?**

Yes, however this type of containment solution would only allow an owner to apply for a Lead Safe exemption, which requires an ongoing monitoring plan, which must be submitted as a part of the exemption application. This ongoing monitoring and schedule outlined on page 12 of the exemption application instructions is guidance from HUD whenever encapsulation or containment is used. This is because this type of solution can be compromised by any event that would damage the surface or subsurface material, such as a leak. The monitoring includes at least an annual visual inspection (more often at the start if it is encapsulation) and a risk assessment performed by an EPA-certified risk assessor every two years. HPD has included this HUD guidance as a requirement for maintaining a Lead Safe exemption status.

#### **6. What is a monitoring plan?**

A Lead Free exemption asserts that there is no lead in the given unit, therefore, no monitoring plan would be required if the unit or building receives a Lead Free exemption.

However, the Lead Safe exemption status means that lead-based paint remains in the multiple dwelling, but it is encapsulated or contained by a material with an intended life of at least 20 years as a durable barrier. Both encapsulants and containments require ongoing monitoring to ensure they have not been compromised, meaning the encapsulated or contained lead-based paint could be exposed and become a hazard. While containment primarily uses mechanical fasteners as the method of attachment, encapsulants primarily must bond to the surface. This difference influences how often the abated area must be monitored, with encapsulation requiring more frequent monitoring to start.

HPD has created minimum standards for the monitoring plan using recommendations outlined by the U.S. Department of Housing and Urban Development (HUD), Guidelines for Evaluation and Control of Lead-Based Hazards in Housing, 2nd Edition, July 2012, Chapters 12 and 13. The application instructions details what is required to be in the monitoring plan which includes but is not limited to an annual visual assessment of the contained or encapsulated surface and a risk assessment performed by an EPA-certified risk assessor at least every two years. The owner is required to conduct ongoing monitoring that follows the monitoring plan submitted with the application for exemption and to retain those records. Failure to retain the records may result in HPD revoking the exemption status. If the containment or encapsulation needs repair, certified contractors and lead safe work practices must be used. HPD may audit your monitoring records at any time so be sure to clearly and regularly maintain these records.

**7. I applied for an exemption last year, before January 1, 2020, and the application I used is different than the Application for Exemption currently on HPD's website. Which application can I use to apply for an exemption today?**

HPD is no longer accepting the old exemption application (version dated 9/2017) or its corresponding affidavits. As of 1/1/2020, HPD will only accept the new Application for Exemption and its corresponding affidavits. Please find the new application [here](#).

**8. If an owner had XRF testing done and previously applied for an exemption before 2020 but never received the exemption due to an incomplete application, can an owner re-submit for the application now still using this older testing?**

Yes, HPD will honor the XRF testing that was done prior to 2020 as long as it is accompanied by the required affidavits from the lead-based paint inspector or risk assessor who did the testing and there has been no 617 code violation or DOHMH Commissioner's Order to Abate (COTA) issued to the unit or building on the application after the XRF testing date. However, the application and the affidavits submitted now must be the current version available on the [HPD website](#). HPD will not accept an older version of the application or affidavits.

**9. I was previously granted an exemption. Is my exemption still valid?**

The change of the application form did not affect exemptions that were already granted in 2019 or earlier using the old application form.

**10. Can my current or new exemption be revoked?**

Yes, HPD may revoke an exemption for the following reasons:

- A. The issuance of a denial of a rebuttal of a lead-based paint violation based upon the presumption of lead paint.
- B. The issuance of a lead-based paint violation based upon testing by HPD.
- C. The issuance of Commissioner's Order to Abate lead-based paint hazards or unsafe lead paint by the Department of Health and Mental Hygiene.

Additionally, if the exemption granted is for Lead Safe, the owner's failure to perform or retain the records of the required monitoring may result in HPD revoking the exemption.

HPD will provide written notification to the owner upon making a determination to revoke an exemption, and, as a result of the revocation, such multiple dwelling or part thereof, or dwelling unit shall be subject to all applicable provisions of Article 14 of Title 27 of the Administrative Code of the City of New York.

In addition, if the threshold of what defines lead-based paint is lowered to 0.5 mg/cm<sup>2</sup> of lead as tested by an x-ray fluorescence analyzer pursuant to paragraph (b) of subdivision (7) of section 27-2056.2, this exemption, granted prior to the effective date of that change, shall remain in effect only until the turnover of such unit. Upon turnover, such dwelling unit shall be subject to all applicable provisions of Local Law 1 of 2004 (Article 14 of Title 27 of the Administrative Code of the City of New York). HPD will notify you if this new threshold becomes effective and your exemption request will need to be submitted again using the new testing threshold level.

**11. Under Local Law 31 of 2020 and its requirement to test all rental units by August 2025, many apartment owners are deciding how best to apply for all the units in a building to be exempt. One option is a building-wide exemption, which would allow for the inspector or risk assessor to use a specific statistical sampling methodology approved by the U.S. Department of Housing and Urban Development, therefore not testing all the units individually. The second option is to have each apartment tested individually and to then apply separately for individual apartment exemptions. Which is recommended?**

Although the building-wide exemption may require less work and may end up being a lower cost at the start because lead-testing can be done using the sampling methodology (see page 13 of the Exemption Application for more detail), there are disadvantages that the owner should consider. A significant consideration with a building-wide exemption is that if any of the units in the building trigger a revocation (for example, any unit is subsequently found to have lead-based paint by way of an HPD or DOHMH inspection), HPD's revocation of the exemption will be for all units carried under that single building-wide exemption and a new application will require re-testing again using the sampling method (you cannot just abate and retest the subject apartment). The owner would then become subject to Local Law 1 again for all the units in the building, meaning, annual notices, visual inspections, certified contractors, and safe work practices, etc. In contrast, individual apartment exemption revocations will only apply to the individual apartment.

**12. Local Law 66 of 2019 contains a provision that the lead-based paint threshold will be lowered from 1.0 mg/cm<sup>2</sup> to 0.5 mg/cm<sup>2</sup> after the U.S. Department of Housing and Urban Development issues the required technical guidance. Since that guidance has not been issued yet, do buildings/apartments that have existing active exemptions need to re-test?**

No, not currently. The existing exemptions remain active.

**13. Is the exemption automatically revoked once the threshold is lowered?**

Once the threshold is lowered, the exemption is not immediately revoked. The exemption is revoked when the unit first becomes vacant (turnover) after the threshold is lowered. For the exemption to be in good standing again, the owner would be required to retest at the lower threshold and submit those test results. Please note, HPD will issue more information to property owners at the time the threshold is lowered.

**14. I've read the Application for Exemption instructions and I still have questions. Who can I call?**

Questions can be directed to HPD's Lead Exemption Unit at (212) 863-5501, Option 4.