

“Get Ahead of Lead” June 2022 Briefing

Dear Property Owners,

Furthering our commitment to providing property owners information on their obligations under the law, the Department of Housing Preservation and Development (HPD) will be publishing a series of quarterly bulletins online and via email. Each bulletin will highlight one aspect of the law and is not meant to comprehensively cover all laws and rules that apply. This bulletin will be available in other languages on [HPD’s webpage](#) within the next two weeks, under the heading *Briefings*.

This publication is intended for informational purposes only and is not intended as legal advice. This information is not a complete or final statement of all the duties of owners and tenants regarding laws and rules relating to housing in New York City.

REMINDER:

You must notify HPD on turnover of a unit that was granted exemption using the testing level of 1.0 mg/cm².

Any exemption from Local Law 1 of 2004 granted to an apartment unit using the testing level of 1.0 mg/cm² is deemed revoked and no longer in affect as of the first turnover of that unit after December 1, 2021, and the owner is required to report this turnover to HPD. Owners must report the turnover using the required [Affidavit](#), also available in other language on HPD’s [webpage](#).

More information is available in the [Frequently Asked Questions](#).

LEAD-SAFE WORK PRACTICES: FREQUENTLY ASKED QUESTIONS

Lead-based paint poisoning can cause developmental problems for children under the age of six. To limit exposure to lead-based paint hazards, Local Law 1 of 2004 (Local Law 1) requires property owners of buildings built before 1960, or buildings built between 1960 and 1978 where the owner knows there is lead-based paint, to identify and remediate lead-based paint hazards in apartments where a child under age six resides. Under Local Law 1, “resides” means that the child under 6 lives in the apartment or routinely spends 10 or more hours a week in the apartment. New York City banned the sale of lead-based paint much sooner than the U.S. did and, therefore, has rules focused on residential buildings built before January 1, 1960. However, federal regulations for lead-based paint still also apply in New York City, and owners should be aware that those requirements for safe work practices extend to housing built before January 1, 1978. You can find more information about federal lead-based paint requirements at the U.S. Environmental Protection Agency (EPA) website: www.epa.gov/lead.

1. *What are lead-safe work practices?*

Lead-safe work practices are practical requirements that ensure that your tenants remain safe from lead-based paint dust while work affecting painted surfaces is being done. Under Local Law 1, some of these requirements are to:

- Minimize dust dispersion, which means **NOT** dry scraping paint (which creates dust), using plastic sheeting on floors to stop dust from settling in cracks on the floor, and using plastic sheeting between work areas to minimize the spread of dust from work areas to non- work areas.
- Clean daily, including mopping and HEPA vacuuming.
- Prior to a tenant reoccupying the area, make sure the surfaces are clear of lead-contaminated dust.
- Use qualified contractors, where required.

2. Who sets the requirements for lead-safe work practices?

In New York City, lead-safe work practices are currently governed by both federal and local agencies. The U.S. Environmental Protection Agency (EPA) and the Occupational Health and Safety Administration (OSHA) set general federal standards related to both occupant and worker safety and worker qualifications. The U.S. Department of Housing and Urban Development (HUD) also sets standards for housing that receives federal assistance, such as public housing and Section 8/Housing Choice Voucher programs. Locally, both the Department of Health and Mental Hygiene (DOHMH) and HPD set standards related to lead-safe work practices.

3. How do I know if I have to use lead-safe work practices?

Federal and local requirements vary slightly, so applying the strictest requirement is the best approach to make sure you are following both sets of rules. This means, if your building was built before 1978, you should use lead-safe work practices if you will be doing any repair or renovation that will disturb more than 2 square feet of paint in a single room, 10% of a small component, -or involve the removal of windows. This requirement should be followed whether or not there are any children in the specific unit or building because under federal regulations, all residential buildings built before January 1, 1978, are presumed to have some amount of lead-based paint either on the interior, exterior, or both. Under EPA regulations, you must also use safe work practices for exterior work if more than 20 square feet of paint will be disturbed.

HPD has created sample Safe Work Practices record keeping [templates](#) for owner to use to assist with following Local Law 1.

4. What are the penalties property owners can face if they don't use lead-safe work practices?

Tenants can call 311 and file complaints whenever work is being done in either occupied apartments, vacant apartments or common areas of a building without proper tenant protection plans in place that are being followed by contractors/workers (see the [Department of Buildings](#) website for more detail on when a tenant protection plan is required and how to complete one). Whenever painted surfaces are being disturbed, the tenant protection plans must include some description about how dust will be contained, controlled, and cleaned to protect tenants. City agencies will be responsive to these complaints and may issue violations. The Department of Buildings (DOB) may also conduct proactive inspections of work in progress. **If a property owner is determined to not have followed lead-safe work practices, there are multiple city- level penalties that can be issued by DOHMH and DOB. Penalties from DOHMH can range from \$200 to \$2,000 and penalties from DOB can range from \$1,250 to \$25,000**

5. What if I know my building has no lead-based paint?

Property owners can hire an EPA-certified lead-based paint inspector or risk assessor to test the painted surfaces to determine if there is no lead-based paint or identify specifically where lead- based paint is

to assist with this compliance. This is the only way to be certain that your building has no lead-based paint.

A reminder that as of December 1, 2021, the threshold that determines lead-based paint under Local Law 1 was lowered to 0.5 mg/cm² from 1.0 mg/cm². More information about the change to the lead-based paint threshold can be found in HPD's [FAQ](#) and the October 2021 [Briefing](#).

If you've had your building's paint tested, make sure you have all your test and/or abatement records. You might need to present those records to HPD, DOHMH or DOB, if requested. If you completed testing and found no lead, or abated the lead you found, and your building is built before January 1, 1960, you may wish to file with HPD for an exemption from the presumption of lead-based paint so that several requirements of NYC's lead law will not apply to your building. For more information on exemptions, see HPD's [website](#).

6. Can I do lead-safe work practices myself?

Only if you are also properly certified.

- If the work you are doing is not related to lead-based paint violations or Orders issued by the City, you or your contractor must have an EPA certification as a Renovation firm (also known as Renovation, Repair, and Painting or "RRP" certification) and employ EPA-certified Renovators.
- If the work is pursuant to violations or your intent is to permanently remove lead-based paint, you or your contractor must have an EPA certification as a lead-based paint abatement firm (also known as Lead-based Paint Activities certification) and employ EPA-certified lead abatement workers and supervisors to complete the work.
- Additionally, Local Law 1 requires that work in housing where a child under 6 routinely spends 10 or more hours a week that involves disturbing paint of more than 100 square feet in a room or involves the removal of 2 or more painted windows be performed by a contractor who is EPA certified in abatement. However, EPA would require this contractor to be certified in Renovation so, to follow both EPA and Local Law 1, the contractor must be EPA certified in both Renovation and abatement.
- In each case, whether the work requires an EPA-certified Renovation firm or a lead-based paint abatement firm, under Local Law 1, there is also required dust sampling that must be done by an EPA-certified lead-based paint inspector or risk assessor who is independent of the owner and the contractor who performed the work, to confirm that the area is clear of lead-contaminated dust.

7. How do I make sure a contractor is qualified?

EPA regulates worker training and certification requirements and outlines specific required steps if lead-based paint is going to be abated or paint is to be disturbed during repair, renovation, or painting. This includes, but is not limited to, required lead-safe work practices focused on setup, clean-up, and testing to confirm the cleanup was done properly.

For repair, renovation, or painting work (RRP), which includes any work that would disturb more than 2 square feet of paint in a room or involve the removal of windows, property owners should confirm prior to work starting that:

- The firm is an EPA-certified Renovation firm and retain a copy of their certification for your records.

- The person doing the work is an EPA-certified Renovator and retain a copy of their certification for your records.

The EPA website has information about the [Renovation, Repair and Painting \(RRP\) program](#). On this webpage, you can also search for an EPA-certified firm.

In addition, the EPA website provides information about [Lead-Based Paint Abatement](#) as well as offers guidance on the difference between [RRP and Abatement](#).

8. What other documentation must I have to show lead-safe work practices were used?

Under Article 14 of the NYC Housing Maintenance Code, property owners are required to retain lead-based paint records for no less than 10 years. All violation and non-violation work could be subject to a records request from HPD following the issuance of a Commissioner's Order to Abate (COTA) from DOHMH or as a part of a proactive audit in accordance with [Local Law 70 of 2019](#). More information about this proactive audit can be found in the January 2021 [Briefing](#) or by reviewing a sample [Record Production Order](#).

Some of the records requested would include evidence that lead-safe work practices were followed if repair, renovation, or painting work was done that disturbed more than 2 square feet of paint or 10% of a component in a room in an apartment where a child under the age of 6 years old resides. If this has occurred, the property owner must provide HPD with:

- The EPA certificate of the firm;
- The EPA certificate of the person who performed the work;
- An Affidavit from the EPA-certified firm that the work was performed in accordance with §27-2056.11 of Article 14 of the Housing Maintenance Code that includes the start and completion date of the work and includes the address and contact information for the firm that completed the work;
- A description and the location of the work performed in each room or the invoices for the work;
- The results of the lead-contaminated dust clearance test from an independent laboratory certified by the state of New York;
- An Affidavit from the certified person who took the dust sample verifying the address and the date it was taken and a copy of that person's EPA certificate; and
- Checklists completed when/if the occupants were allowed temporary access to the work area.

Under Local Law 1, there are additional requirements for the type of firm that can be used and required documentation if the work disturbs paint of more than 100 square feet in a room, involves the removal of 2 or more painted windows, or if the work being performed is in response to a violation.

9. Where can I get more local guidance?

Property owners can access local lead-safe work practices guidance here:

- [HPD Guide to Local Law 1 of 2004 Work Practices](#)
- [DOHMH Landlord Instructions for Complying with Commissioner's Order to Remediate Lead Paint Hazards](#)
- [NYC Health Code Section 173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint](#)
- [DOHMH Information for Building Owners](#)

Additionally, [LeadFreeNYC](#) is a great starting place for all questions about local law and rules on lead and lead-based paint. The city is regularly adding to this website, and it can easily direct the public to

each agency's specific website. HPD is in the process of updating additional guidance and forms to help property owners be informed and in compliance. Stay tuned!