

“Get Ahead of Lead” September Briefing

Topics: Lead-Safe Work Practices and Financial Assistance to Fix Lead Paint Hazards

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 is specifically focused on requirements related to lead-safe work practices and provides answers to some frequently asked questions to help property owners better understand their responsibilities under federal and local requirements and penalties they could face if lead-safe work practices aren't followed. It also offers information on financial assistance that may be available to rental property owners to fix lead paint hazards.

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 of the duties of owners and tenants with regard to laws and rules relating to housing in New York City.

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 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. 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 with 3 or more units built before January 1, 1960.

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. 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.
- Take daily clearance tests of the dust in work areas to check for lead. The specific type of tests that are acceptable depend on the reason why the work is happening.

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. 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. 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. This requirement should be followed whether there are any children in the specific unit or building because under federal regulation, 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.

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 (see the [Department of Buildings](#) website for more detail on when a tenant protection plan is required and how to complete one) in place that are being followed by contractors/workers. 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 \$2000 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.

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 in November.

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

Technically, yes, but 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 and employ EPA-certified Renovators. If the work is pursuant to violations, you or your contractor must have an EPA certification as a lead-based paint abatement firm and employ EPA-certified lead abatement workers and supervisors to complete the work. In each case, there is also required sampling that must be done by EPA-certified workers independent of your company to confirm 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), 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 multiple dwellings no less than 10 years. All violation and non-violation work could be subject to a records request following the issuance of a violation 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 [Bulletin #2 to Property Owners – June 2019](#).

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 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.

There are additional requirements for the type of firm that can be used and required documentation if the work disturbs more than 100 square feet in a room or if the work being performed is in response to a violation.

9. Where can I get more local guidance?

Property owners can the 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!

CITY OFFERS FINANCIAL ASSISTANCE TO FIX LEAD PAINT HAZARDS

HPD and DOHMH are currently offering **grants** to eligible rental property owners **to fix lead paint hazards** in apartments, building common areas and fire escapes through their Lead Hazard Reduction and Healthy Homes Program.

The program provides grant funding averaging \$8-10K per apartment (depending on need) to repair lead paint hazards through a combination of abatement (removal and replacement of deteriorated lead paint components) and interim controls (treating lead paint surfaces to bring them to an intact condition). The program can also selectively fund certain other repairs designed to address non-lead paint hazards such as trip/fall hazards, fire hazards, inoperable doors/windows, and others. **Owners are not required to pay back these grants.**

A building must meet the following criteria to qualify: it must be located in the five boroughs; it must have been built prior to 1960; the majority of apartment units must be occupied by tenants with low- and very-low incomes; and at least some apartment units in the building must be occupied by families with a child/children under age six, or a pregnant woman, or visited frequently by a child under age six. In addition, the owner must agree, for five years following the repair work, to rent treated units to low-income tenants and give priority to families with young children. **Don't wait! Get ahead of your lead paint problems now!**

To find out more about the program and download the application, visit: nyc.gov/lead-reduction.