

“Get Ahead of Lead” March 2021 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. Visit the [HPD website](#) to read this bulletin and past bulletins in other languages.

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.

Owner’s Responsibility at Apartment Turnover

Complete the work required in units at vacancy

When a dwelling unit changes tenants, owners of buildings built before 1960 are required under Local Law 1 to complete lead-based paint activities focused on making the unit safe for a new tenant before the new tenant takes occupancy (regardless of whether the new tenant has a child at the time of initial occupancy). These activities must also be performed in units built 1960-1978 if the owner has knowledge of lead-based paint. This is referred to as “**turnover.**” The requirements are:

- Remediate all lead-based paint hazards and any underlying defects when such underlying defects exist. At a minimum this would mean wet scrape and paint.
- Provide for the removal of lead-based paint on chewable surfaces with evidence of teeth marks or encapsulate the surface with a hard, puncture resistant encapsulant.
- Provide for the removal of all lead-based paint on friction surfaces on all doors and door frames.
- Provide for the removal of all lead-based paint on friction surfaces on all windows or provide for the installation of replacement window channels or sliders on the friction surfaces.
- Make all bare floors, window sills and window wells in the dwelling unit smooth and cleanable.

All the work must be done using [safe work practices](#) and by an appropriately certified contractor.

Enforcement

Audits

If there is an audit of a property's lead-based paint records and an owner fails to provide the records showing that the apartment met the turnover requirements each time, a Class B violation can be issued for failure to maintain these records. The penalty for this violation is \$1,500 for each apartment where compliance cannot be verified. HPD has created sample forms for an owner to document the turnover inspection was completed: [Sample Forms for Turnover Vacancy Compliance](#). These forms will assist an owner with tracking that turnover was completed **each time that a turnover occurs**.

Inspections

HPD will soon be enforcing the turnover requirement during all inspections where a child under six resides. Class C violations will be issued for units where there is either positive or presumed lead-based paint on deteriorated window and door friction surfaces and where the tenant confirms turnover occurred after August 2, 2004, the effective date of Local Law 1. This new violation will require that the apartment meet the requirements of turnover by removing lead-based paint on window and door friction surfaces within 21 days for the entire unit. This may include window and door friction surfaces that are not posing an immediate hazard at the time of the inspection but would have been required to have been abated at the time of turnover. The owner must separately certify properly both the violation for the lead-based paints hazard observed on the specific window or door friction surface cited in the lead-based paint hazard violation and the completion of the turnover work on the other window and door friction surfaces.

The owner has an opportunity to request a postponement of the correction date for all violations and/or to contest the issuance of these turnover violations by carefully following the instructions provided with the Notice of Violation.

The penalty for failure to comply with these violations are \$250 per day per violation, up to a maximum of \$10,000.

Lease commencement and Turnover

Owners must certify compliance with the turnover requirements on the [Lease/Commencement of Occupancy Notice](#) (also available in [Spanish](#)). This document must be provided to the new tenant with the lease along with a copy of the DOHMH [pamphlet](#). In addition to the owner certification about having met the turnover requirements, the Lease Notice asks the new occupants if a child under age six will reside (using the new definition of "resides" as to routinely spend 10 or more hours per week) in the unit. Owners must use the Lease Notice which was effective January 1, 2020 and includes this new definition of "resides." The notice is linked [here](#) and available on the [HPD website](#).

Lower lead-contaminated dust levels beginning June 1, 2021

After the completion of any work that would disturb paint of more than 2 square feet in a room (or more than 10% of a small component) in a unit or common area of a building covered by the

requirements of Local Law 1 or any work conducted pursuant to HPD lead-based paint violations or DOHMH Commissioner's Orders regarding lead-based paint, the owner is responsible for ensuring the dust wipes, which verify how much lead in dust may remain in the work area, are performed. These dust wipes cannot be performed by the contractor who completed the remediation or abatement work nor by the owner and must be completed by a third party.

Generally, the dust wipes must be taken in three areas if there is a window in the room where the work was done – the floor, a window sill and a window well. The dust wipe must be taken at least one hour after the last cleaning of the work area is completed. Lead-contaminated dust levels in excess of the legally allowable amount constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is done and dust test samples have been collected in compliance with this section. The owner must provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit and keep a copy of these records for at least 10 years.

Areas where every lead-contaminated dust sample result is below the following levels may be cleared for re-occupancy. The clearance levels were reduced in June 2019 and are again being reduced as per Local Law beginning June 1, 2021. See below for the levels previously acceptable and the new levels that will be required as of June 1, 2021.

Samples taken prior to June 12, 2019:

- Floors: 40 micrograms of lead per square foot
- Window Sills: 250 micrograms of lead/square foot
- Window Wells: 400 micrograms of lead/square foot

Samples taken between June 12, 2019 – June 1, 2021:

- Floors: 10 micrograms of lead per square foot
- Window Sills: 50 micrograms of lead/ square foot
- Window Wells: 100 micrograms of lead/ square foot

Samples taken on/after to June 1, 2021:

- Floors: 5 micrograms of lead per square foot
- Window Sills: 40 micrograms of lead/square foot
- Window Wells: 100 micrograms of lead/square foot

Help for owners

- View HPD's webinar on Lead-based Paint: [Owner's Responsibilities at Apartment Turnover](#) for detailed information for understanding Turnover.
- Visit HPD's webinar on [Safe Work Practices in Buildings with Lead-Based Paint](#).
- Find all of the forms listed above and more information about lead-based paint in general on our [website](#).