



APPLICATION FOR EXEMPTION FROM ADMINISTRATIVE CODE § 27-2056.5(a)

Owner or authorized individual:

- Read and follow the instructions attached to this application.
- Fill out this application completely, sign it, and have it notarized.
- Attach all required documentation. An incomplete application will be not be accepted.
- Submit the application and all required affidavits as original documents.

Section I: Owner Information

The person completing/submitting the application is (check applicable box):

- the registered owner of the below referenced multiple dwelling
- a registered officer or director of the corporate owner of the below referenced multiple dwelling
- the registered managing agent of the below referenced multiple dwelling
- a registered representative of the cooperative housing corporation for the below referenced multiple dwelling
- a registered representative of a condominium board of managers
- the shareholder of record on the proprietary lease for the below referenced cooperative dwelling unit
- the owner of record for the below referenced condominium unit
- an authorized representative of the following governmental agency: _____

Print Name of Authorized Representative

Print Title of Authorized Representative

Registered* Owner Name: _____

Registered Owner Address: _____

Borough: _____

Zip Code: _____

Telephone: _____

Email: _____

(Unless the application is for an individual co-op/condo unit or governmental agency-owned multiple dwelling, all written exemption communication will only be delivered to the registered owner in the Department’s records.)

*Note: If you are **NOT** the registered owner or the authorized agent of a governmental agency, you must also complete the following:*

Applicant* Name: _____

Applicant Address: _____

Borough: _____

Zip Code: _____

Telephone: _____

Email: _____

*Governmental agencies do not need to fill in the registered owner and applicant sections above.

Section II: Type of Dwelling

This exemption application is for (choose only **ONE**):

- Individual Unit** (only **ONE** individual unit per application)
- Apartment Building – Units Only** (only **ONE** individual building per application)
- Apartment Building – Common Areas Only** (only **ONE** individual building per application)
- Entire Apartment Building** (Units and Common Areas) (only **ONE** individual building per application)
- Apartment Complex – Units Only** *In this case, if applicable, you must provide multiple addresses, registration IDs, BINs, blocks, and lots for the Section III: Dwelling Information.* (only **ONE** apartment complex per application)
- Apartment Complex – Common Areas Only** *In this case, if applicable, you must provide multiple addresses, registration IDs, BINs, blocks, and lots for the Section III: Dwelling Information.* (only **ONE** apartment complex per application)
- Entire Apartment Complex** (Units and Common Areas) *In this case, if applicable, you must provide multiple addresses, registration IDs, BINs, blocks, and lots for the Section III: Dwelling Information.* (only **ONE** apartment complex per application)

Section III: Dwelling Information

➤ **Fill out this address section ONLY IF the application is for an Individual Unit.**

Address of Multiple Dwelling: _____

Unit # _____ Borough: _____

Registration ID #: _____ Building Identification Number (BIN) _____

Block: _____ Lot: _____

➤ **Fill out this section ONLY IF the application is for an Apartment Building or an Apartment Complex.**

Does the apartment building or apartment complex for the application include multiple street addresses/registration IDs/BINs/blocks/lots/?

Yes (*If YES, attach separate full list of addresses/registration IDs/BINs/blocks/lots.*)

No

Address of Multiple Dwelling: _____ Borough: _____

Registration ID #: _____ Building Identification Number (BIN) _____

Block: _____ Lot: _____

Total number of dwelling units in the building/complex: _____

Total number of dwelling units tested: _____

Section IV: Type of Exemption

Choose either **Lead Free** or **Lead Safe** below.

Lead Free (also must choose one directly below)

By selecting Lead Free, I am submitting this application for an exemption from Administrative Code § 27-2056.5(a) on the basis that (choose one):

Lead Free – No Abatement Required

I have obtained a determination from a lead-based paint inspector or risk assessor certified pursuant to Title 40 CFR Part 745 subparts L and Q that each tested surface and component in each dwelling unit for the above-referenced multiple dwelling or individual dwelling unit or common area, is free of lead-based paint as is defined in Administrative Code §27-2056.2, and **to the best of my knowledge, there has been no previous use of encapsulation or containment in these areas.**

OR

Lead Free – Abatement Required

I have obtained a determination from a lead-based paint inspector or risk assessor certified pursuant to Title 40 CFR Part 745 subparts L and Q that at least one tested surface or component in the above-referenced multiple dwelling or individual dwelling unit or common area has tested as lead-based paint as is defined in Administrative Code §27-2056.2, **AND** the lead-based paint on each surface and component has been **abated**, such that the lead-based paint has been removed or the surface or component has been replaced by a lead-based paint free surface or component so that the area has been made completely free of lead-based paint. **To the best of my knowledge, there has been no previous use of encapsulation or containment in these areas.**

Lead Safe (also must initial below)

By selecting Lead Safe, I am submitting this application for an exemption from Administrative Code § 27-2056.5(a) on the basis that I have obtained a determination from a lead-based paint inspector or risk assessor certified pursuant to Title 40 CFR Part 745 subparts L and Q that at least one tested surface or component in the above-referenced multiple dwelling or individual dwelling unit or common area has tested as containing lead-based paint as is defined in Administrative Code §27-2056.2 **AND** the lead-based paint on each surface and component within each dwelling unit has been **abated AND** at least one surfaces or components determined to be lead-based paint **was abated using encapsulation or containment** in accordance with 28 RCNY §11-08. I understand that encapsulants may not be used to abate surfaces which are chewable or subject to binding, friction, impact or heat. **I understand that I am obligated to periodically monitor and maintain the surfaces that were encapsulated or contained and document the outcome of the visual inspection, risk assessment, and any subsequent, required maintenance actions and activities, and keep records of such activities. See HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, 2nd Edition, July 2012, (HUD Guidelines) Chapter 12: Abatement and Chapter 13: Encapsulation and 28 RCNY §11-08.**

For all **Lead Safe** applications, the owner **MUST** initial below to affirm.

_____ **(Owner's Initials)** I affirm that encapsulants and containment will be periodically monitored at a minimum as outlined in the Instructions for this application and 28 RCNY 11-08 and as documented in the Monitoring Plan submitted with this application and that records will be maintained and available for inspection regarding such monitoring for at least 10 years.

Section V: Documentation Requirements

For Lead Free with No Abatement Required

- 1) A copy of the inspection report which demonstrates that all surfaces and components tested negative for lead-based paint prepared by an individual certified pursuant to Title 40 CFR Part 745 subparts L and Q (Inspector or Risk Assessor) in the format provided by 40 CFR §745.227(b) and HUD Guidelines Chapter 7. See pages 7-32 through 7-36 from Chapter 7 of the HUD Guidelines for the minimum requirements of the report and the contractor instructions portion of the exemption application instructions.
- 2) A copy of the EPA certification for the certified inspector or risk assessor who performed the inspection and prepared the inspection report in support of this application for exemption.
- 3) The affidavit by the certified inspector or risk assessor who performed the inspection with original signature and notary. The language of the affidavit may not be altered. *(Note: If multiple inspectors or risk assessors were used, an affidavit for each must be submitted.)*

For Lead Free with Abatement Required

- 1) A copy of the inspection report which includes surfaces or components which tested positive and negative for lead-based paint prepared by an individual certified pursuant to Title 40 CFR Part 745 subparts L and Q (Inspector or Risk Assessor) in the format provided by 40 CFR §745.227(b) and HUD Guidelines Chapter 7. See pages 7-32 through 7-36 from Chapter 7 of the HUD Guidelines for the minimum requirements of the report and the contractor instructions portion of the exemption application instructions.
- 2) A copy of the EPA certification for the certified inspector or risk assessor who performed the inspection and prepared the inspection report in support of this application for exemption.
- 3) The affidavit by the certified inspector or risk assessor who performed the inspection with original signature and notary. The language of the affidavit may not be altered. *(Note: If multiple inspectors or risk assessors were used, an affidavit for each must be submitted.)*
- 4) A copy of the EPA certification for the lead abatement supervisor or project designer who supervised the work.
- 5) A copy of the EPA abatement firm certification.
- 6) The affidavit from the Lead-Based Paint abatement firm signed by the lead abatement supervisor, project designer, or firm principal with original signature and notary. The language of the affidavit may not be altered.
- 7) Detailed records of the abatement and the substantial alterations performed. See the contractor instructions portion of the exemption application instructions.
- 8) A copy of the EPA certification for the lead inspector or risk assessor who took the surface dust samples.
- 9) The affidavit from the certified inspector or risk assessor who took the surface dust sample with original signature and notary. The language of the affidavit may not be altered. *(Note: If multiple inspectors or risk assessors were used, an affidavit for each must be submitted.)*
- 10) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of analysis and preparation of the samples and the chain of custody for the sample.

For Lead Safe

- 1) Everything listed under “Lead Free with Abatement Required” plus the following below.
- 2) A description from the abatement firm of how the encapsulation and/or containment could fail or be compromised and monitoring recommendations. *(Note: The abatement firm affirms to providing this description in the affidavit they complete.)*
- 3) The owner’s plan for monitoring the encapsulation and/or containment to ensure the area remains lead safe.
- 4) In addition, if an **encapsulant** was used:

- a. The affidavit from the certified lead abatement worker who applied the encapsulant with original signature and notary. The language of the affidavit may not be altered. (*Note: If multiple abatement workers were used, an affidavit for each must be submitted.*)
- b. A copy of the EPA certification for the certified lead abatement worker who applied the encapsulant.

Note: The required affidavits are at the end of this exemption application package.

Section VI: Dates of Testing and Abatement

List the date(s) the lead-based paint inspection/XRF testing was performed:

If abatement was required, list the date abatement started: _____ and was completed:

Section VII: Signed and Notarized

(Print Name)

(Signature)

State of New York, County of _____

Notary Stamp

Sworn to before me this _____ day of _____, 20_____

(Notary Print Name)

(Notary Signature)

INSTRUCTIONS FOR EXEMPTION FROM ADMINISTRATIVE CODE § 27-2056.5(a)

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A. Background

Article 14 of Title 27 of the Administrative Code of the City of New York concerns lead poisoning prevention and control in multiple dwellings in the City. Under § 27-2056.5(a) of Article 14, any paint or similar surface-coating material in the interior of any dwelling unit in a multiple dwelling (3+ units) erected prior to January 1, 1960, (pre-1960) in which a child under six years of age resides or in the common areas of the building is presumed to be lead-based paint. Article 14 provides for certain responsibilities of and requires specific actions by owners of pre-1960 multiple dwellings based upon this presumption.

Administrative Code §27-2056.5(b), which is part of Article 14, provides that an owner of a pre-1960 multiple dwelling may apply to the Department of Housing Preservation and Development (HPD) to have their multiple dwelling or dwelling unit and/or common area exempted from the presumption contained in §27-2056.5(a).

For a unit covered by an exemption, the landlord will no longer be required to:

- Provide annual notices regarding lead-based paint to tenants, pursuant to §27-2056.4(d)(1).
- Conduct annual inspections of units with children under six, pursuant to §27-2056.4(a).

In order to apply for the exemption, owners must complete the application and submit any required additional documentation as described in these instructions. Units or buildings must be a multiple dwelling (3+ units in a building) and built prior to January 1, 1960 in order to be eligible for exemption.

B. Who May Apply

Only buildings that are validly registered with HPD may apply for exemption. Property owners of residential buildings are required by law to register annually with HPD if the property is a multiple dwelling (3+ residential units) or a private dwelling (1-2 residential units) where neither the owner nor the owner's immediate family resides. You can register online, and the registration fee is \$13. Registration is required annually by September 1 or whenever owner or management information changes. More information is available at <https://www1.nyc.gov/site/hpd/owners/compliance-register-your-property>.

Only the following individuals may apply for an exemption from Administrative Code § 27-2056.5(a):

- the registered owner
- a registered officer or director of the corporate owner
- the registered managing agent
- a registered representative of the cooperative housing corporation
- a registered representative of the condominium board of managers
- the shareholder of record on the proprietary lease for the cooperative dwelling unit
- the owner of record for the condominium unit.
- an authorized representative of a governmental agency

For the purpose of these instructions and the application, such qualified individuals are “owners.”

C. Existing Lead-Based Paint Violations

HPD requires that certain open code violation orders be cleared or as approved by HPD prior to submission of an application, otherwise the application will be rejected. Individual units must have no open 617 code violations (for lead-based paint hazards) or 618 code violations (for failure to provide records demanded by HPD in response to a Department of Health and Mental Hygiene Commissioner’s Order to Abate) specific to that unit. A building (or complex of buildings) must have no open 618 code violations or 617 code violations for any of the building units. An owner with these open violations as described above **MUST** contact the HPD Lead Exemption Unit in order to determine how to resolve these violations prior to submitting an exemption application or the application will be rejected.

D. Lead Free vs. Lead Safe Exemption Status

Exemptions can only be issued if the owner demonstrates that the multiple dwelling is either **Lead Free** or **Lead Safe**. This exemption status must be identified on the application and the owner must provide the required supporting documentation.

Lead Free

In order to be granted a Lead Free exemption status, the owner must demonstrate that each tested surface and component is free of lead-based paint as defined in Administrative Code § 27-2056.2(7). This can be demonstrated two ways: 1) the surfaces or components test free of lead-based paint as defined in § 27-2056.2(7), or 2) the surfaces or components tested positive for lead-based paint and the paint was permanently removed or the component was removed/replaced leaving the area as now free of lead-based paint.

In applying for a Lead Free exemption status, the owner must also confirm in the exemption application that, to the best of their knowledge, no surface in the dwelling unit, dwelling, or common area for which the exemption is sought contains paint that has been encapsulated or contained.

Lead Safe

A Lead Safe exemption status means that the testing identified lead-based paint and the lead-based paint was not permanently removed or the component removed/replaced. Instead the surface or component was temporarily encapsulated or contained using approved abatement methods for both. The term "contained" shall mean 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. Encapsulation may not be used to abate surfaces which are chewable or subject to binding, friction, impact or heat, like doors, windows, or radiators.

E. Filling out the Application Form

a) General Instructions

An owner who wishes to apply for an exemption from § 27-2056.5(a) must submit an application to HPD, completed by the owner and include the required supporting documents. **The notarized application and all required notarized affidavits must be submitted as original documents.** Please keep a copy of the full submission for your own records.

The completed application must be sent to:

Department of Housing Preservation and Development
94 Old Broadway, 7th Floor
New York, NY 10027
Attn: Lead Exemption Unit

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

b) Section I: Owner Information

The registered owner's information must be provided, even if they are not the person submitting the application. As noted in the above section "Who May Apply," more individuals other than the property owner are authorized to complete and submit the application. The individual completing the application must identify which one of the following authorized individuals they are:

- the registered owner
- a registered officer or director of the corporate owner
- the registered managing agent
- a registered representative of the cooperative housing corporation
- a registered representative of the condominium board of managers
- the shareholder of record on the proprietary lease for the cooperative dwelling unit
- the owner of record for the condominium unit.
- an authorized representative of a governmental agency

If the individual completing the application is not the registered owner of the multiple dwelling, other authorized individual's contact information must be provided separately in this section.

c) Section II: Type of Dwelling

In this section, the owner must identify the part of the multiple dwelling the application is for. Only **ONE** type can be selected per application.

Individual Unit: Select this as the type of exemption you are applying for if you are submitting an exemption application for an individual apartment unit.

Apartment Building – Units Only: Select this as the type of exemption you are applying for if your testing contractor followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of apartment units which reflects the lead-based paint content of all the apartment units in a single building. This is allowed only if supporting records or a visual assessment by an inspector or risk assessor determines that the building has a common paint history throughout the building. An exemption may be granted for all the apartment units in the building based on the units selected and sampled/tested. This is only for the building apartment units and DOES NOT include common areas.

Apartment Building – Common Areas Only: Select this as the type of exemption you are applying for if your testing contractor individually tested common areas for the building or followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of common areas which reflects the lead-based paint content of all the common areas of a single building. This sampling methodology is allowed only if supporting records or a visual assessment by an inspector or risk assessor determines the building has a common paint history throughout the building. An exemption may be granted for all the common areas in the building based on the common areas selected/tested. This is only for the building common areas and DOES NOT include apartment units.

Entire Building: This selection combines *Apartment Building – Units Only* and *Apartment Building – Common Areas Only*. Select this as the type of exemption you are applying for if your testing contractor followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of dwelling units AND common areas. This is allowed only if supporting records or a visual assessment by an inspector or risk assessor determines the building has a common paint history throughout the building for both the apartment units AND the common areas. An exemption may be granted for all the apartment units and common areas in the building based on the apartment units and common areas selected/tested.

Apartment Complex – Units Only: This selection expands *Apartment Building – Units Only* to an entire apartment complex of buildings. Select this as the type of exemption you are applying for if your testing contractor followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of apartment units which reflects the lead-based paint content of all the apartment units for multiple buildings in an apartment complex. This exemption DOES NOT include the common areas for those buildings.

Apartment Complex – Common Areas Only: This selection expands *Apartment Building – Common Areas Only* to an entire apartment complex of buildings. Select this as the type of exemption you are applying for if your testing contractor followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of common areas which reflects the lead-based paint content of all the common areas for multiple buildings in an apartment complex. This exemption DOES NOT include the apartment units for those buildings.

Entire Apartment Complex: This selection expands *Entire Building* to an entire apartment complex of buildings. Select this as the type of exemption you are applying for if your testing contractor followed the HUD Guidelines Chapter 7 sampling methodology, testing a subset of dwelling units AND common areas which reflect the lead-based paint content of all the apartment units AND all the common areas for multiple buildings in an apartment complex.

d) Section III: Dwelling Information

Only buildings that are validly registered with HPD may apply for exemption. More information is available at <https://www1.nyc.gov/site/hpd/owners/compliance-register-your-property>.

In this section, you must provide the address of the registered multiple dwelling for which you are seeking an exemption. If you are applying for an exemption for an individual unit, complete the address information under that heading. Only one individual unit can be applied for with each application. If an owner wishes to apply for exemption for more than one individual unit, the owner must submit a separate application for each unit.

If the application is for an apartment building or an apartment complex (multiple buildings/addresses), you must enter one address and attach the full list of addresses, registration IDs, BINs, blocks, and lots, if needed. Owners must also provide the number of dwelling units in each building and, for apartment buildings and apartment complexes, the number of dwelling units tested in each building. For multiple dwelling exemption applications, you may only be required to test a sample number of units for you to seek an exemption for all units. The inspector or risk assessor you hire will be able to help you determine if you can test a sample number of units.

The block and lot for the property is assigned to the property by the Department of Finance and is available on your tax bill. The Registration ID # is assigned by the Department of Housing Preservation and Development and is required to be posted in your building. The Building Identification Number (BIN) is assigned by the Department of Buildings and can be obtained from their website (www.nyc.gov/dob). All three of these identifiers must be provided so that we can confirm that the exemption is being provided for the proper structure.

e) Section IV: Type of Exemption

In this section the owner must identify if they are applying for **Lead Free** or **Lead Safe** status. If the selection is Lead Free, the owner must further identify if the Lead Free status means that the dwelling surfaces and components tested free of lead-based paint (*Lead Free – No Abatement Required*) or identify if surfaces or components tested positive for lead-based paint and the paint was permanently removed or the component was removed/replaced leaving the area as now free of lead-based paint (*Lead Free – Abatement Required*).

If the selection is Lead Safe, this means that lead-based paint was identified and abated but not all was permanently removed, or the component removed/replaced, as would be required for the Lead Free status. Instead one or more of the lead-based paint surfaces or components was temporarily encapsulated or contained using approved abatement methods. If this is the selection that owner must also initial to affirm that encapsulants and containment will be periodically monitored and that records will be maintained and available for inspection regarding such monitoring for at least 10 years.

Owners can only select **ONE** status per application. For example, if an owner is submitting an application for multiple apartment units where each unit was individually tested, the units on the application must all qualify for the same status, either Lead Free or Lead Safe.

IMPORTANT NOTE: If a dwelling is issued a Lead Safe exemption and the owner has later conducted permanent abatement that would now qualify the dwelling as Lead Free, the owner must submit a new application to request this upgraded status. Until such upgraded Lead Free status is granted, the Lead Safe dwelling would be subject to the monitoring and records requirements of the Lead Safe status.

f) Section V: Documentation Requirements

The documentation required to be submitted with this application depends on the type of work completed related to the application. In addition to the application form itself, all applications must have at a minimum the following documents:

- 1) A copy of the inspection report prepared by an individual certified pursuant to Title 40 CFR Part 745 subparts L and Q (Inspector or Risk Assessor) in the format provided by 40 CFR §745.227(b) and HUD Guidelines Chapter 7. See pages 7-32 through 7-36 from Chapter 7 of the HUD Guidelines for the minimum requirements of the report and the contractor instructions portion of the exemption application instructions.
- 2) A copy of the EPA certification for the certified inspector or risk assessor who performed the inspection and prepared the inspection report in support of this application for exemption.
- 3) The affidavit by the certified inspector or risk assessor who performed the inspection with original signature and notary. The language of the affidavit may not be altered. (*Note: If multiple inspectors or risk assessors were used, an affidavit for each must be submitted.*)

If abatement was completed, additional documentation is also required. The application lists the required documentation for both Lead Free and Lead Safe abatement. Please refer to the application for the detailed list.

For Lead Safe exemption, one of the required documents is an **“owner’s plan for monitoring the encapsulation and/or containment to ensure the area remains safe.”** Because Lead Safe abatement is not permanent, the owner is

required to periodically monitor these surfaces and keep records of such monitoring. Owners who apply for a Lead Safe exemption status must also include a monitoring plan that meets the requirements for monitoring outlined in the HUD Guidelines Chapters 12 and 13. See the *Lead Safe Monitoring Plan* section of these instructions to know what is required.

g) Section VI: Dates of Testing and Abatement

In this section, the owner must list the date the inspection/lead testing was performed. Confirm this date with your contractor. If the date does not match the date in the testing documents provided by the Inspector or Risk Assessor and listed on their affidavit, the application will be rejected. If testing was performed on multiple dates, provide each date.

If abatement was required, the owner must list the date the abatement was performed. Confirm this date with your contractor. If the date does not match the date in the abatement documents provided by the abatement firm and listed on their affidavit, the application will be rejected. If abatement was performed on multiple dates, provide each date.

h) Section VII: Signed and Notarized

In this section, the owner (or authorized applicant) must sign the application and it must be witnessed by a notary. The application must be submitted as an **original** signed and notarized document.

F. Information for the Owner

a) Inspection and Lead-Based Paint Testing

The inspection and any lead-based paint testing (using specific equipment called an X-Ray Florescence (XRF) Analyzer to test the lead content of paint) must only be conducted by a lead inspector or risk assessor. A lead inspector or risk assessor is a professional who has successfully completed a training program accredited by the United States Environmental Protection Agency (EPA) and has received a certification as a lead inspector or risk assessor pursuant to Title 40 Code of Federal Regulations (CFR) Part 745 or has obtained an interim certification from an accredited EPA training entity. The application will require documentation detailing the testing as well as a copy of the certification of the inspector or risk assessor and an affidavit completed by that certified individual. This documentation is detailed in the section below, *Completing the Application*.

Note: The owner should ask to see a copy of the inspector or risk assessor's EPA or interim certification prior to contracting for this service. Lists of EPA-certified inspectors and risk assessors can be obtained from the EPA website at <https://cfpub.epa.gov/flpp/pub/index.cfm?do=main.firmSearchAbatement> or by contacting the National Lead Information Center at 1-800-424-LEAD (5323).

More information related to inspection and lead-based paint testing for the contractor you might hire is provided in a separate section below. Please review that section as well as provide it to contractors you hire or are considering hiring. Contractors must affirm they have received these instructions as a part of their affidavit. If the contractor does not provide complete information required as a part of the supporting documentation, if information is inconsistent with the application or with other aspects of the documentation, or if the contractor does not follow standard norms and practices as demonstrated in the documentation, the application may be rejected. HPD will provide the owner with information as to why the application was rejected and how to resolve the issue(s).

b) Abatement

If the lead-based paint testing has identified paint or a coating material with a lead content at or above the current threshold (1.0 milligrams of lead per square centimeter), then the paint must be abated in order to qualify for exemption. As noted above, there are two types of exemption status that can be granted: Lead Free or Lead Safe.

Deciding the Abatement Method: Lead Free vs Lead Safe

Lead Free abatement conducted to address the lead-based paint means that surfaces or components with lead-based paint have had the paint removed or the component removed/replaced. Lead Safe abatement conducted to address the lead-based paint means that surfaces with lead-based paint have been either encapsulated with a coating specifically approved for this purpose or contained with another material meaning it is 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.

Because Lead Safe abatement is not permanent and can be affected by structural or maintenance issues, such as a water leak, the owner is required to periodically monitor these surfaces and keep records of such monitoring. An owner who applies for a Lead Safe exemption status must also include a monitoring plan that meets the requirements for monitoring outlined in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing Second Edition (July 2012) (HUD Guidelines) Chapters 12 and 13. HPD outlines the minimum requirements below in *Monitoring Plan*. HPD also requires that the abatement firm submit a description of how the encapsulants and/or containment could fail or be compromised and provide monitoring recommendations. The owner should use this description to inform their monitoring plan. If the abatement firm has included monitoring instructions stricter than the HPD requirement, owners must include the stricter recommendation in their monitoring plan.

Owners should consider and prepare for these additional requirements related to Lead Safe abatement versus Lead Free abatement when working with their contractor to determine the best method for abatement.

Hiring the Contractors: Lead Abatement and Lead-Contaminated Dust Sampling

Lead abatement must be performed by an EPA certified lead abatement firm, under the direction of a lead abatement supervisor or project designer. The application will require documentation detailing the abatement, as well as an affidavit from the certified firm completing the abatement. If the Lead Safe abatement included encapsulation, the application must also include an affidavit from the certified lead abatement worker who applied the encapsulant material and a copy of that individual's certification.

Work of this type must further be cleared with surface lead-contaminated dust sampling performed no sooner than one hour after the abatement. The lead-contaminated dust sampling must be conducted by a certified inspector or risk assessor who does not work for the original EPA-Certified Firm who completed the abatement and is independent of the owner. The application requires an affidavit from the certified individual completing the required surface dust sampling, the results of that dust sampling, and a copy of all required certificates of the certified individuals. If the results of the dust sampling are at or in excess of the clearance levels established in Title 28 of the Rules of the City of New York §11-06, the owner should require the abatement firm to re-clean the area and dust sampling must be repeated. This process must be repeated until the results are below the clearance level. This documentation is detailed in the section below, *Completing the Application*.

Certain firms are currently not allowed to submit any documents related to lead-based paint abatement and remediation in New York City. HPD will reject an application that submits documents from one of these firms. You can confirm the firm you are considering hiring is not on this list by checking here: <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-work-results-prohibited-entities.pdf>

More information related to abatement for the contractor you might hire is provided in a separate section below. Please review that section as well as provide it to contractors you hire or are considering hiring. Contractors must affirm they have received these instructions as a part of their affidavit. If the contractors do not provide complete information required as a part of the supporting documentation, if information is inconsistent with the application or with other aspects of the documentation, or if the contractors do not follow standard norms and practices as demonstrated in the documentation, the application may be rejected. HPD will provide the owner with information as to why the application was rejected and how to resolve the issue(s).

Note: Applications based on the use of the HUD Guidelines Chapter 7 random sampling method which tested positive for a component on the initial inspection must have the documentation for the abatement of the same component for each dwelling unit or common area where that component would be expected to be found. For example, if the baseboard in one apartment is found positive, the baseboards in all apartments must be documented to have been abated.

c) Lead Safe Monitoring Plan

Lead Safe exemption status requires that the surfaces to which such encapsulants are applied or containments used to be subject to periodic monitoring for at least 20 years or the life of the surface or component, whichever is longer, to ensure that they remain undamaged and intact. The owner must retain these monitoring records for at last 10 years and be prepared to provide these monitoring records to HPD upon request.

Following the recommendations outlined in the HUD Guidelines Chapters 12 and 13, HPD requires a monitoring plan be submitted with the application that includes the following minimum components:

Visual Monitoring for Encapsulated Surfaces and/or Components	The owner MUST conduct visual monitoring of the surfaces and/or components encapsulated: <ul style="list-style-type: none"> • at least 1 month after the date the encapsulant was applied; then • 6 months after the date the encapsulant was applied; and to then occur • at least annually (every year) and for the life of the material. The plan MUST include the date of the 1-month and 6-month inspection deadlines. This monitoring can be performed by the owner/agent.
Visual Monitoring for Contained Surfaces and/or Components	The owner MUST conduct visual monitoring of the surfaces and/or components contained at least annually (every year) and for the life of the material. This monitoring can be performed by the owner/agent.
Risk Assessment	The owner MUST identify in the plan that they will use an EPA certified risk assessor to conduct a risk assessment of the surfaces and/or components encapsulated and/or contained at least once every two years.
Recordkeeping	The owner MUST confirm in the plan that they will keep records of the visual monitoring and the risk assessments for at least 10 years.

HPD also requires that the abatement firm submit a description of how the encapsulants and/or containment could fail or be compromised and provide monitoring recommendations. The owner should use this description to inform their monitoring plan. **If the abatement firm has included monitoring instructions stricter than the HPD requirement, owners must include the stricter recommendation in their monitoring plan.**

d) Revoked Exemption

An exemption issued by HPD is not a permanent status. HPD can revoke the exemption status for reasons such as if there is newly identified evidence of lead-based paint, if the enclosure or containment has failed, or if the owner does not maintain records, including those for the required Lead Safe monitoring. One such example for revocation of the exemption status based on newly identified information would be the issuance of a lead-based paint violation by HPD or the issuance of an order to abate lead-based paint hazards or unsafe lead-based paint by the Department of Health and Mental Hygiene (DOHMH).

If the DOHMH order was for an apartment unit and it matched an Individual Unit which had been issued an individual exemption, then only that unit's exemption would be revoked. However, if the DOHMH order was for an apartment unit and that apartment unit is part of an apartment building or complex that was issued an exemption, the full building or complex exemption would be revoked. If the exemption status is revoked, the owner will be notified in writing by HPD and the owner would again be subject to all the provisions of Article 14 of the Housing Maintenance Code.

Absent fraud or misrepresentation in the initial application, an owner may reapply for the Lead Safe or Lead Free exemption.

Owners – Provide the next section to your contractors: *Information for the Contractor.*

G. Information for the Contractor

a) Inspection and Lead-Based Paint Testing: Certified Inspector or Risk Assessor

Title 40 CFR §745.227(b) provides that in inspecting each dwelling unit or common area, each component with a distinct painting history must be tested for lead-based paint, except when the certified individual determines that the component was replaced after January 1, 1978 or does not otherwise contain lead-based paint. For purposes of an exemption application, however, since Administrative Code § 27-2056.5(a) bases the presumption on buildings built prior to January 1, 1960, an inspector may use that date when making a determination solely for purposes of an exemption from § 27-2056.5(a). Finally, certified individuals should be aware that Title 40 CFR § 745.227(a) provides that when performing a lead-based paint activity such as an inspection under subdivision (b) of that section, the certified individual must perform the activity using documented methodologies, including, but not limited to the HUD Guidelines Chapter 7.

HUD Guidelines Chapter 7 Methodologies

There are several important points to note regarding the application of HUD Guidelines Chapter 7 methodologies with respect to an inspection conducted to support an application for exemption.

- 1) Certified individuals should be aware that Chapter 7 states that although the lead-based paint testing or sampling techniques used for paint inspections are similar to the techniques used for risk assessments, the number of lead-based paint tests or samples taken for paint inspections "is considerably greater than the number of paint samples required for risk assessment, because risk assessments measure lead only in deteriorated paint." (HUD Guidelines Chapter 7, Lead-Based Paint Inspection I, D. Paint Testing for Inspections and Risk Assessment.) Since owners who are applying for an exemption from Administrative Code § 27-2056.5(a) must demonstrate the absence or containment of lead-based paint, *whether or not on a deteriorated surface*, HPD's rules require that an inspection, and not a risk assessment, be performed. Inspectors and risk assessors should be aware of this distinction when contracting with an owner for an inspection—the service required to be performed in order to apply for an exemption is not a risk assessment.
- 2) It should be noted that the inspection conducted, and certification made pursuant to these instructions is solely for the purpose of complying with the application requirements to obtain an exemption from Administrative Code § 27-2056.5(a). These instructions are not intended to affect or change any provision of any other local, state or federal laws, or the requirements for compliance therewith.
- 3) In dwelling units, common areas, buildings, and across apartment complexes, the inspector or risk assessor may choose testing combinations and select dwelling units or common areas according to the methodology set forth for multi-family housing in Chapter 7 of the HUD Guidelines only in those instances in which the owner provides the certified individual with documentation which shows common construction, painting and maintenance history for the building. The identification of testing combinations and choice of dwelling units or common areas to sample must be based upon the documentation supplied to the certified individual by the owner, or in the absence or insufficiency of such documentation, based upon a visual inspection of a sufficient number of dwelling units or common areas to identify the appropriate testing combinations. The number of dwelling units chosen to be tested must also comply with the Chapter 7 requirements specifically applicable to pre-1960 buildings. See HUD Guidelines Chapter 7, Lead-Based Paint Inspection, V. Inspections in Multi-family Housing, Table 7-3, Number of Units to be Tested in Multi-family Building or Developments.
- 4) In the absence of such documentation by the owner, or the visual inspection by the inspector or risk assessor, the inspector or risk assessor must test each component in each dwelling unit or common area in order to provide the required certification. An exemption application will be rejected if the inspector or risk assessor is unable to access a sufficient number of dwelling units to comply with the statistical sampling requirements of the HUD Guidelines Chapter 7. In addition, an exemption application will also be rejected if the individual dwelling unit XRF testing is determined to be incomplete.

HPD Review of Inspection Records

Inspection documentation is subject to HPD's review and approval. The inspection records must provide complete information, must be consistent with the application and with other aspects of the documentation, and must follow demonstrated standard norms and practices.

The following is a list of common reasons an application may be rejected related to the inspection. This list does not represent the full list of possible rejection reasons.

1)	Information provided in the report summary is not consistent with the inspection records.
2)	Information provided in the AFFIDAVIT BY CERTIFIED INDIVIDUAL WHO PERFORMED INSPECTION is not consistent with the inspection.
3)	Inspection records and drawings do not include all expected common components such as walls, doors, and a heating element. In a kitchen, HPD would also expect to see cabinets identified. HPD cannot accept incomplete testing or testing of rooms that appear under construction.
4)	All dates and start times and end times are not provided or appear altered.
5)	Reports, testing documents, or drawings are not legible.
6)	XRF calibrations are not done following the manufacturer's recommendations or recalibration is not done if the testing exceeds four hours.
7)	Testing documents do not include the XRF make, model, and serial number.
8)	EPA certifications are altered, expired, or not legible.
9)	Affidavits are altered, incomplete, or not legible.
10)	An inadequate, or an incomplete/insufficient number of testing combinations is provided. Note: A testing combination is at a minimum a combination of a room equivalent, a building component and the component's substrate.
11)	The XRF testing for the type of dwelling does not follow the appropriate HUD testing protocol. An individual apartment exemption application must follow the HUD Single-Family Housing Inspection Protocol, which is more comprehensive than the Multi-Family Housing Inspection protocol. For an apartment building or multiple buildings where a sampling methodology is used, the tester may use either the Single-Family Housing Inspection Protocol or the Multi-Family Housing Inspection Protocol.

Paint Chip Samples

The exemption application process does allow for paint chips sample laboratory analysis however HPD does not encourage this testing practice as it can disturb potential lead-based paint and the area where the paint chip was removed must be properly sealed immediately and the area cleaned of potential lead-contaminated dust. Furthermore, the use of more advanced XRF machines have greatly reduced the need for this type of invasive sampling.

Paint chips will only be accepted when the inspector or risk assessor has properly demonstrated that the XRF tests fall within the inconclusive zone for the particular XRF machine or the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Contractors who remove paint chips for sampling from an occupied unit or common area of an occupied building **MUST** properly stabilize the painted area the chip was removed from and wet-clean the area for presumed lead-contaminated dust.

b) Abatement: Certified Lead Abatement Firm

Contractors must follow the requirements for abatement outlined in the HUD Guidelines Chapters 12 and 13. The EPA-Certified Lead Abatement Firm is required to include the abatement methods used and the locations of rooms and/or components/surfaces where abatement occurred. The firm will be required to complete affidavits related to the abatement and provide copies of the firm certification as well as the certification of the supervisor/project designer who supervised the abatement work. Additionally, if encapsulation is used, the lead abatement worker who completed the work must also provide an affidavit and a copy of their EPA certification.

The following is a list of common reasons an application may be rejected related to the abatement. This list does not represent the full list of possible rejection reasons.

1)	Information provided in the AFFIDAVIT BY LEAD ABATEMENT FIRM or the AFFIDAVIT BY CERTIFIED INDIVIDUAL WHO APPLIED ENCAPSULANT is not consistent with the abatement records.
2)	The abatement report is not signed by the Lead Supervisor or Project Designer.
3)	Rooms or locations in the abatement records are not consistent with the inspection records for the abated surfaces or components.
4)	All dates and start times and end times are not provided or appear altered.
5)	Abatement documents are not legible.
6)	EPA certifications are altered, expired, or not legible.
7)	Affidavits are altered, incomplete, or not legible.

Note: Applications based on the use of the HUD Guidelines Chapter 7 random sampling method which tested positive for a component on the initial inspection must have the documentation for the abatement of the same component for each dwelling unit or common area where that component would be expected to be found. For example, if the baseboard in one apartment is found positive, the baseboards in all apartments must be documented to have been abated.

Abatement by Paint Removal or Replacement (Lead Free)

HUD and EPA prohibit certain techniques (see 24 CFR 35.140, and 40 CFR 745.227(e)(6), respectively) because they are known to produce extremely high levels of lead exposure and make dwellings difficult to clean up. The following are prohibited lead-based paint abatement methods:

- Open flame burning or torching (includes propane-fueled heat grids).
- Machine sanding or grinding without HEPA local vacuum exhaust tool.
- Abrasive blasting or sandblasting without HEPA local vacuum exhaust tool.
- Heat guns operating above 1100° F or charring the paint.
- Dry scraping (except for limited surface areas).
- Paint stripping in a poorly ventilated space using volatile stripper.

Abatement by Encapsulation or Containment (Lead Safe)

One important precaution from the HUD Guidelines is to ensure that lead safety can be followed if containment is breached at a future time. Prior to containment, the surface to be contained should be labeled with a warning, “Danger: Lead-Based Paint.” The label, spray-paint, or stamp lettering should be in permanent ink.

Encapsulants may not be used to abate surfaces which are chewable or subject to binding, friction, impact or heat. Encapsulation must cover the lead-based paint surfaces using pre-determined and approved methods.

Any encapsulants used for lead abatement subsequent to the HUD Guidelines Chapter 13: Abatement by Encapsulation, must adhere to all standards for encapsulants set by the American Society for Testing and Materials (ASTM International), which has issued three standards for liquid coating encapsulants (see <https://www.astm.org/Standard/index.html>).

- ASTM E 1975-04 – Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings.
- ASTM E 1796-03(2011) – Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings.
- ASTM 1797-04 – Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings.

In addition to the affidavits that all abatement contractors will be required to complete as a part of the application, if encapsulation and/or containment was used, the EPA-Certified Lead Abatement Firm must include a description of how the encapsulants and/or containment could fail or be compromised and provide monitoring recommendations. If encapsulation was used, the lead abatement worker who applied the encapsulant must provide an additional affidavit and a copy of their EPA certification.

c) Lead-Contaminated Dust Sampling

No sooner than one hour after the abatement, an inspector or risk assessor must perform lead-contaminated surface sampling, also known as clearance. The certified individual who performs the dust sampling must provide an affidavit and a copy of their EPA certification and must be independent of the abatement firm and of the owner. The chain of custody must also be signed by this certified individual.

New York City Local Law 66 of 2019 and Title 28 of the Rules of the City of New York require that the results of the dust sample be below the following levels:

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

**AFFIDAVIT BY CERTIFIED INDIVIDUAL WHO PERFORMED INSPECTION
(TESTING AND/OR SAMPLING)**

I, _____ (**print name**), performed the inspection and testing and/or sampling for lead-based paint at the premises located at _____ (**address**) on _____ (**date**).

I am certified to perform such inspections and testing and/or sampling under Part 745 of Title 40 of the Code of Federal Regulations subparts L and Q. I have read and followed the instructions provided for the application for exemption from Administrative Code § 27-2056.5(a), and I performed the inspection, and testing and/or sampling in accordance with those instructions and Title 40 CFR § 745.227, and Chapter 7 of the U.S. Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, 2nd Edition (July 2012) as applicable to the exemption application, and Administrative Code § 27-2056.5(b), and Title 28 of the Rules of the City of New York §11-08.

I am (**check one**):

_____ Self employed

_____ Employed by an EPA Certified Firm (**name**): _____ and have attached a copy of that firm's EPA certification.

In addition, I have attached a copy of my EPA certification to this affidavit. My EPA certification number is _____ and it expires on _____.

I have (**check at least one**):

_____ Reviewed all building documentation provided to me by the owner which demonstrated a similar construction, painting and maintenance history for all units/common areas and the components therein in support of the testing combinations and, if applicable, in the selection of the dwelling unit(s)/common area(s).

_____ Tested a sample of surfaces and components in order to determine common construction and paint history in support of the testing combinations and, if applicable, in the selection of the dwelling unit(s)/common area(s).

OR

_____ Tested each dwelling unit and/or common area using a Single Family Housing testing methodology, including testing closets as room equivalents if they were dissimilar from the adjoining room equivalent.

The report of the inspection is annexed to this affidavit. I understand that the determination that I am making includes the following in the above referenced premises (**check at least one**):

_____ Individual dwelling unit

_____ Individual common area

_____ Every dwelling unit in a building or complex (sampling method)

_____ Every common area in a building or complex (sampling method)

(Print Name)

(Signature)

State of New York, County of _____ *Notary Stamp*

Sworn to before me this _____ day of _____, 20_____

(Notary Print Name)

(Notary Signature)

AFFIDAVIT BY LEAD ABATEMENT FIRM

EPA-Licensed Lead Abatement Firm Name: _____
Address: _____
Tel: _____ Fax: _____ Email: _____
EPA Abatement Firm Certification Number: _____ Expiration date: _____
Date Issued: _____

EPA-Licensed Lead Abatement Supervisor/Project Designer Name: _____
EPA Certification Number: _____ Expiration Date: _____

Premises address: _____ Apt: _____

I, _____ (**print name**), the EPA Firm Principal/Lead Abatement Supervisor/Project Designer for this abatement or remediation work, hereby swear that the work was performed under the supervision of a Lead Abatement Supervisor/Project Designer during the period commencing _____, 20____ and completed _____, 20____ for the address and dwelling unit number referenced above. I have read and followed the instructions provided for the application for exemption from Administrative Code § 27-2056.5(a). All abatement work was conducted using safe work practice methods consistent with all industry practices and standards and in compliance with all provisions of the Title 40 of the Code of Federal Regulations, Part 745, Subparts L and Q, and Chapters 12 and 13 of the U.S. Department of Housing and Urban Development’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, 2nd Edition (July 2012), Title 28 RCNY §11-06, and any other applicable law and rules.

A copy of the EPA Lead Paint Abatement Firm certification and the Lead Abatement Supervisor/Project Designer certification in effect for the individual who supervised the work are attached.

I have attached a detailed written description of the abatement, including abatement methods used, and the locations of rooms and/or components/surfaces where abatement occurred. If encapsulation and/or containment was performed, I have included a description of how the encapsulants and/or containment could fail or be compromised and provided monitoring recommendations.

(Print Name) EPA Firm Principal / Lead Abatement Supervisor / Project Designer EPA	(Signature) EPA Firm Principal / Lead Abatement Supervisor / Project Designer EPA
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State of New York, County of _____ *Notary Stamp*

Sworn to before me this _____ day of _____, 20_____

(Notary Print Name)	(Notary Signature)
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AFFIDAVIT BY DUST WIPE SAMPLER

I, _____ (print name), performed the sampling for lead based-paint dust hazard clearance at the premises located at _____ (address) _____ (apartment number) on _____ (date).

I confirm that I am not related to and am independent of the owner of the multiple dwelling and any individual or firm that performed the work that disturbed or abated lead-based paint. I performed the sampling in accordance with 40 CFR 745.227 and with 28 RCNY §11-06.

I have attached a copy of my EPA Certification issued under 40 CFR 745.226, either as Lead Inspector / Risk Assessor or my 6-month Interim Certification under 40 CFR 745.225 from an EPA accredited school, to this affidavit. My EPA-certification number is _____ and it expires on _____.

I am (check one):

_____ Self employed

_____ Employed by an EPA Certified Firm (name): _____ and have attached a copy of that firm’s EPA certification.

(Print Name)

(Signature)

State of New York, County of _____

Notary Stamp

Sworn to before me this _____ day of _____, 20_____

(Notary Print Name)

(Notary Signature)

AFFIDAVIT BY CERTIFIED INDIVIDUAL WHO APPLIED ENCAPSULANT

I, _____ (print name), applied the encapsulant at the premises located at _____ (encapsulant's name/brand) _____ (address), — _____ (apartment number) on _____ (date).

I am certified to perform abatement pursuant to Part 745 of Title 40 of the Code of Federal Regulations subparts L and Q. I have applied the encapsulant in accordance with the manufacturer's instructions and I have confirmed prior to its application that the encapsulant is compliant with the standards set by the American Society for Testing and Materials (ASTM International) for liquid coating encapsulants. I have not applied the encapsulant to abate any surface subject to binding, friction, impact, or heat or that is chewable.

I have attached a copy of my EPA certification to this affidavit. My EPA certification number is _____ and it expires on _____.

(Print Name)

(Signature)

State of New York, County of _____

Notary Stamp

Sworn to before me this _____ day of _____, 20_____

(Notary Print Name)

(Notary Signature)