

## “Get Ahead of Lead” December Briefing

Topics: Updated Lead Documentations for Property Owners, The Record Production Order, and HPD’s Moderate-Rehab Loan Programs for Older Buildings Now Include Financing for Lead Paint Repairs

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 bulletin specifically focuses on what’s required for owners to start the new year in compliance, including NEW sample forms, and to prepare owners for upcoming record audits. There are also updates to the Lease/Commencement of Occupancy Notice, Exemption Application, and an amendment to the Rules of the City of New York regarding lead poisoning prevention and control. Finally, find out about HPD’s Moderate-Rehab Loan Programs for older buildings that now include financing for lead paint repairs.

*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.*

### Start 2020 in Compliance with Local Law 1 of 2004

Local Law 1 of 2004 (Local Law 1) requires that owners conduct activities related to lead-based paint. Owners must also retain the records of these activities for at least 10 years and, starting in May 2020, certify compliance with these activities as a part of the annual property registration. **Penalties may be significant for failure to conduct these activities and maintain these records.** To assist you with compliance, HPD has detailed below the steps that you need to take and created sample forms owners can use to document compliance. Those sample forms are available on the HPD website and linked below in the description.

#### 1. Send out the Annual Notice to determine if there is a child under six living or routinely spending 10 or more hours a week in a dwelling unit. Conduct investigations if the tenant does not respond.

- Between **January 1 and January 16**, owners of multiple dwelling built before 1960 (or between 1960 and 1978 if the owner has knowledge there is lead-based paint) are required to deliver an [Annual Notice](#) (in English and in [Spanish](#)) to each tenant and to collect that completed notice from the tenant by February 15.
  - The Annual Notice asks the tenant to disclose if a child under the age of six resides in the dwelling unit.

- As of January 1, 2020, “**resides**” is defined as “to routinely spend 10 or more hours per week in a dwelling unit”, which includes both a child who lives in the apartment and a child who just visits for this period of time.
- **Important: Owners cannot use the same Annual Notice as last year!** Because of the change noted above, owners must use the new form in January 2020. The notice version linked has been updated to reflect this definition. (Note that this version above also helps the owner with window guard compliance so knock out two requirements with one form!)
- All of these dwelling units where a child is determined to reside as defined above are required to be inspected for lead-based paint hazards as described in #2 below.
- Keep evidence that this notice was delivered and retain the completed notice received back from the tenant. This notice is important because it determines where the owner must do other required activities required under Local Law 1, such as the annual investigation and follow safe work practices.
- Make sure your tenants know where to return this notice. If the tenant does not return the completed notice by February 15, the owner must conduct follow-up inspections between **February 16 and March 1** to attempt to determine if a child under six lives or routinely spends more than 10 hours in the dwelling unit. An owner must keep records of the attempts made to contact the tenant to perform the investigation.
- If the owner does NOT receive the completed notice from the tenant and cannot determine based on these follow-up investigations whether there is a child under six, the owner must also notify the [Department of Health and Mental Hygiene](#) (DOHMH) in writing that no notice has been received back from the tenant. The owner’s notification to DOHMH should be mailed to:

Department of Health and Mental Hygiene — Healthy Homes  
125 Worth Street, Sixth Floor, CN58  
New York, NY 10013

- A copy of the notification to DOHMH should also maintained by the owner.
- HPD has created forms to assist an owner with documenting the notice was sent, received back, or any follow-up inspections done if the notice was not returned by the tenant: [Sample Forms for Delivery of Annual Notice Compliance](#)

## 2. Do the annual investigation and fix deteriorated paint.

- Once the owner knows which units have a child living in the unit or routinely spending 10 or more hours per week in a unit, the owner must perform a visual investigation to look for potential lead-based paint hazards.
- **You do not need to hire a professional to conduct your annual visual investigation.** However, HPD highly recommends that whoever conducts this investigation take the [online training](#) offered by the federal Department of Housing and Urban Development to help the person know what to look for. This investigation is a visual inspection looking for peeling paint, chewable surfaces (such as window sills), deteriorated subsurfaces, friction surfaces (painted doors or windows) and impact surfaces. It must include every surface in every room in the dwelling unit, including the interiors of closets and cabinets. The person conducting the

investigation should keep records about what they saw and HPD has created sample forms to assist with this: [Sample Forms for Annual Investigation Compliance](#)

- After the visual inspection is completed, the owner is required to give a copy of the inspection results to the tenant.
- The owner must also do this visual inspection in any building common areas (such as a lobby, hallway, or stairwell) of the building where a child resides.
- **Next, the owner must repair any deteriorated paint promptly.** If there is peeling paint found on a surface where the owner has no documentation of the whether there is lead paint on the surface, the owner must presume that there is lead paint, and hire the appropriately certified contractor to complete the repairs safely and quickly or, (if you believe there is no lead in the paint because the wall is a new wall, for example) to test the peeling paint and keep documented evidence that the surface does not have lead. All documents regarding any work done by the appropriate contractors must be maintained. **See #4 below for more information about safe work practices.**

### 3. Complete the work required in units at vacancy.

When a dwelling unit changes tenants, owners are required under Local Law 1 to complete certain lead-based paint activities focused on making the unit safe for a new tenant and before the new tenant takes occupancy (regardless of whether the new tenant has a child at the time of initial occupancy). This is referred to as “**turnover.**”

Owners must:

- Remediate all lead-based paint hazards and any such 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 frictions 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 following the safe work practices described below in #4. Owners must then certify compliance with the turnover requirements on the [Lease/Commencement of Occupancy Notice](#) (this version is effective January 1<sup>st</sup>, 2020) provided to the new tenant with the lease and provide documentation to the new tenant upon request along with a copy of the DOHMH [pamphlet](#). Find out more about the **Lease/Commencement of Occupancy Notice** requirement below. HPD has created sample forms for an owner to document the turnover inspection was completed: [Sample Forms for Turnover Vacancy Compliance](#)

### 4. Follow safe work practices all year long.

Local Law 1 of 2004 requires that owners follow and retain evidence that safe work practices were used for all repair work in a dwelling unit or building common area where a child under the age of 6 resides when more than 2 square feet of lead-based paint or paint of an unknown lead content is disturbed.

- The owner must use contractors certified by the federal [Environmental Protection Agency](#) and the level of certification increases if the work being done is over 100 square feet, or requires the removal of two or more windows, is in response to a violation, or is specifically for abatement.
- For work that does not meet these elevated requirements, the owner must hire a contractor firm who is a certified do to renovation (known as Renovation, Repair and Painting or RRP) by the federal Environmental Protection Agency (EPA). The EPA website has information about the [Renovation, Repair and Painting \(RRP\)](#) program. After the work is completed, an EPA-certified Lead Inspector or Risk Assessor must take dust samples to confirm the area is free of lead-contaminated dust, below the levels provided in Local Law 1 and HPD's rules. Owners must retain copies of the firm and worker certificates for the work and the dust samples, the results of the dust samples, and any invoices or documentation of the work done.
- The RRP certification requirement extends to plumbers, electricians, carpentry, etc., if there is any work being done where paint would be disturbed.
- You can find more details about safe work practices in the [HPD Guide to Local Law 1 of 2004 Work Practices](#) and in a [bulletin](#) HPD issued in September.
- Failure to follow safe work practice can result in violations being issued by the Department of Buildings or the Department of Health and Mental Hygiene!

HPD has created a form to help an owner know when the Local Law 1 requirement for documenting safe work practices applies: [Sample Form for Safe Work Practices Compliance](#)

## Auditing Owners' Records

**HPD will begin proactively auditing the lead-related records described above to determine a property owner's compliance with Local Law 1 of 2004.** HPD will identify multiple dwelling buildings built prior to 1960 for audits (in the categories identified in the law) and issue a Record Production Order.

The Record Production Order requires property owners to submit the following documentation for their property within 45 days of the request:

- Copies of records for the Annual Notice distribution and collection
- Copies of records for the completed annual investigations
- Copies of records for work performed to correct open and uncertified lead-based paint hazard violations including documentation of work practices used
- Copies of records for all non-violation work that disturbed lead-based paint or paint of unknown lead content in a dwelling unit where a child under six years of age resides or in the common area of the building, including documentation of the work practices used

- Copies of records for all work performed at turnover of any unit that was the subject of a new tenancy including documentation of work practices used and lead-contaminated dust clearance test results

The Record Production Order will also be issued with a series of affidavits to be completed. A property owner who does not respond to the Record Production Order will be issued an immediately hazardous Class “C” violation and may be subject to additional violations. Property owners will be liable for a civil penalty of no less than \$1,000 and not more than \$5,000 for this violation. A property owner is also subject to civil penalties specifically for failure to conduct the annual notification and inspection and for failure to perform required activities upon turnover.

## Updated Documents Every Property Owner Needs

**Lease/Commencement of Occupancy:** Property Owners are required to provide the [Lease/Commencement of Occupancy Notice for Prevention of Lead-Based Paint Hazards](#) (this version is effective January 1<sup>st</sup>, 2020) to new occupants as a form of inquiry if a child under age six will reside (to routinely spend 10 or more hours per week) in the unit along with a copy of the DOHMH [pamphlet](#). Owners must also certify on this notice that they have performed the required turnover work prior to occupancy of the unit by the new occupants. This notice is also required at lease renewal.

**Exemption Application:** Property owners can hire qualified companies to conduct testing to determine whether there is lead-based paint in their buildings and work proactively to reduce the liability associated with lead-based paint. Local Law 1 provides for an exemption from certain provisions of the law based on submission of the required testing and documentation. HPD’s updated [Exemption Application](#) now includes detailed instructions and required affidavits. HPD will issue a bulletin soon to provide more detailed information about the exemption application process.

## The Adoption of Amended Rules Regarding Lead Poisoning Prevention and Control

The [Notice of Adoption of Amendments to Rules Regarding Lead Poisoning Prevention and Control](#) amended the Rules of the City of New York (RCNY). The rules clarify that owners of multiple dwellings can apply to receive exemptions from Local Law 1 requirements as either “Lead Safe” or “Lead Free.” Exemptions can be granted for individual dwelling units or for an entire building. The lead-free exemption requires submission of testing and documentation that the unit or building does not contain lead-based paint, either through testing negative or through the lead-based paint being permanently removed. The lead safe exemption requires submission of testing and documentation that lead-based paint surfaces have been contained or encapsulated.

HPD’s lead paint rules were also updated to be consistent with Local Law 70 of 2019 that HPD shall audit owners’ compliance with Local Law 1 by requiring submission of the records required to be kept for a minimum of 200 buildings per fiscal year. The adopted rules set criteria for when such records

must be submitted, but do not limit the agency from requiring records under any other circumstances where it deems it necessary to do so. The adopted rules also describe the documentation required to be kept and submitted upon a written audit demand.

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## HPD's Moderate-Rehab Loan Programs for Older Buildings Now Include Financing for Lead Paint Repairs

For owners of existing buildings with 3 or more units in need of major building systems repair/replacement, there are two HPD loan programs that offer affordable financing for rehabilitation work:

- **The Multifamily Housing Rehabilitation Loan Program (HRP)** provides low-interest (up to 3%) rehabilitation loans for the replacement of major building systems, including, but not limited to, roof and window replacement, building envelope work (Local Law 11 and pointing), and upgrades to the heating, electrical, and/or plumbing systems. For details, visit the [HRP webpage](#).
- **The Green Housing Preservation Program (GHPP)** provides no-interest, forgivable loans to finance energy efficiency and water conservation improvements, in combination with low-interest (up to 3%), repayable loans to finance needed systems upgrades, including, but not limited to, roof, window and boiler replacement. Project scopes of work must include energy efficiency measures that are projected to save at least 20% in annual energy (heating and electric) usage, as determined by a third-party energy audit. For details, visit the [GHPP webpage](#).

Now, through part of the City's Lead-Free NYC initiative, both programs also offer 0% interest, forgivable financing of up to \$10,000 per residential unit for abatement of lead-based paint, for eligible rental buildings constructed prior to 1960. Lead inspection/testing is performed by HPD at no cost to the owner. Through this initiative, owners receive assistance in making their buildings safer and healthier for current and future tenants and comply with local NYC Lead Law requirements.

Financing for lead abatement through these programs is available **only** in combination with a larger moderate-rehabilitation scope of work.

To find out more, email [hpdpres@hpd.nyc.gov](mailto:hpdpres@hpd.nyc.gov).