

The Realtor's Role – 2010 Lead-Based Paint Regulations

Real Estate In-Depth June, 2010

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On April 22, 2010, new regulations adopted by the Environmental Protection Agency ("EPA") became effective. These EPA regulations address the handling of lead-based paint during renovations in target housing. "Target Housing" means any residence built prior to 1978 and "child-occupied facilities". For Realtors, ensuring that recommended contractors are properly certified when renovations or repairs are made to pre-1978 private housing and general familiarity with the law and regulations are essential.

Lead-Based Paint Hazards

The impact of lead exposure on young children and babies, even before they are born, is well known. Childhood lead poisoning, according to the EPA, "remains a major environmental health problem in the United States". Lead can be ingested into a child's body by breathing or swallowing lead dust, by eating soil or paint chips containing lead and from plumbing systems containing lead pipes which contaminate the water children drink. Adults are also impacted by exposure to lead and the problems which ensue, i.e., damage to the brain and nervous system, behavior and learning problems, impaired growth, nerve disorders, reproductive problems and muscle and joint pain, are common complaints of children and adults exposed to lead poisoning.

Focus of the New Regulations

The new federal regulations require that contractors who perform renovations, repairs and painting that disturb more than six (6) square feet of paint in homes, child care facilities and schools built before 1978, must be certified and trained to follow specific work practices which are intended to ensure that lead contamination does not ensue. Prior to these new regulations, coops and condos were generally not included under EPA guidelines. Under the new rules, coops and condos, even those in New York City, will be included in the coverage of the new Law. In New York City, the lead-based paint regulations will apply to repairs and renovations in multiple dwellings where a child under six (6) years of age is present.

Contractors Must Be Certified

The New EPA regulations require that contractors be trained and become "certified renovators" and follow specified renovation work practices. The contractors who perform this work must also have available to them staff members who are trained "dust sampling technicians" who are responsible for ensuring that the work area is

properly cleaned following the renovations. The regulations establish requirements for accreditation of the workers and their new training programs. Anyone who performs renovations in pre-1978 housing and child-occupied facilities “for compensation” which involves disturbing surfaces with lead-based paint, must be in compliance with the new regulations.

Landlords who utilize their own workers on rental properties (including one or two family houses) are deemed to be doing work for compensation and thus, such properties are now included. The regulations are very specific and require certified contractors whenever a surface is disturbed containing more than six (6) square feet on an interior surface or more than twenty (20) square feet on an exterior surface. Because window replacements are known to release significant lead-based dust into the surrounding areas, window replacement is not considered to be a “minor repair” regardless of the size of the window.

How to Find Certified Contractors

Lists of certified renovators are now becoming available on the EPA website and each state is permitted to create its own regulations and to create a certification process. The certified renovators, after performing work on target housing, “must visually confirm that all visible dust and debris has been cleaned up”. There are specific requirements for examining window wells referred to as the “white glove test” and floors and counters must also be carefully examined. Certified renovators must also maintain records of the procedures utilized in the renovation or repair of any property.

New Disclosures

Prior to the new regulations, a resident of a unit undergoing renovation and repair was simply required to receive the standard EPA pamphlet “Protect Your Family from Lead in Your Home”. Renovators must now provide a new EPA pamphlet entitled “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools”. The renovation firm must deliver the pamphlet to the occupant of the dwelling unit not more than sixty (60) days prior to commencement of the work. A written acknowledgment of delivery must be obtained and if the renovator is to perform the work in a common area of a building, the firm must also notify all residents who are potentially affected by the renovations in the common areas.

Although many contractors complained that they were “surprised” by the implementation of these new regulations, all states had been notified that as of June 23, 2008, each individual state could apply to the EPA to administer and enforce training programs. As of April 22, 2009, individual training programs could apply to the various states for accreditation. As of October 22, 2009, renovation firms were permitted to apply for certification. The April 22, 2010 date was simply the implementation date by which all renovations performed in target housing, had to be performed by certified

firms using trained renovators who were familiar with and follow the supervision and clean up requirements of the EPA regulations.

The Role of the Realtor

Realtors have for many years, been required to comply with the lead-based paint regulations and ensure that prospective tenants and purchasers of property received the lead-based paint pamphlets and disclosure documents. Landlords and owners are required to disclose known information on lead-based paint and lead-based paint hazards before a lease becomes effective or before a property becomes the subject of a firm contract. While these obligations for Realtors remain the same under the new regulations, when dealing with target housing, Realtors should be cautious about recommending any contractor who is not properly certified to perform renovations in a pre-1978 housing facility and should have essential familiarity with the new requirements.

Buyer's Agent

Prior to the implementation of the new regulations, it was generally believed that a buyer's agent was not subject to the EPA disclosure requirements. The EPA did not subscribe to this point of view and had indicated that disclosure requirements also apply to buyer's agents unless they are paid entirely by the buyer (an occurrence that almost never occurs). Accordingly, both seller's and buyer's agents are generally deemed to be responsible to provide the disclosure forms relating to lead-based paint hazards and to provide the EPA brochure regarding lead-based paint to prospective tenants and buyers.

Other References

The Realtor.org website now includes webinars which are specific to the newly implemented EPA regulations and address the role of the Realtor. It is strongly recommended that each Realtor take the time to view the presentations on the site of Realtor.org and also obtain comprehensive information on the EPA website at www.epa.gov/lead/pubs/leadinfo.htm. The EPA site provides significant resources in the form of pamphlets on lead-based paint and information for the public and for contractors.

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