NAR Issue Summaries

Environment / Lead Paint

NAR Committee:

Land Use, Property Rights and Environment Committee

What is the fundamental issue?

Under the Residential Lead-Based Paint Hazard Reduction Act, Realtors are required to facilitate a process to disclose the presence of lead paint in pre-1978 homes by the owner to a prospective buyer in a timely manner. The purpose of this regulation is to reduce exposure to lead paint and improve public health.

The same Act directed the U.S. Environmental Protection Agency (EPA) tocreate a framework that regulates renovation, repair and painting (RRP) activities in pre-1978 residential properties. This regulation was finalized and is now being implemented nationwide.

I am a real estate professional. What does this mean for my business?

The law requires real estate professionals to obtain and disclose information on known lead paint hazards in homes. Realtors are also required to have both buyer and seller review an informational pamphlet on the hazards of lead paint, date and initial a disclosure form, keep hard copies of this information for three years, be subject to periodic, unannounced searches by EPA officials and be fined if non-compliance is discovered. All of these requirements have legal, educational and regulatory costs associated with them.

For the Lead Paint Renovation, Repair and Painting (RRP) program, residential property managers must spend more on staff who now must be EPA certified in lead-safe renovation procedures. The Agency may impose the same regulatory burden on commercial building owners and managers if data show their RRP activities pose a lead hazard to children.

In addition, contractors must be certified and comply with the lead-safe renovation procedures, which drives up the cost of these renovation activities, and ultimately the cost of owning and managing both residential and commercial properties.

In addition, as a result of changes to guidance related to the RRP, more property managers and will need to certified under the RRP program.

NAR Policy:

NAR opposes mandatory testing for lead-based paint tied to the transaction process and supports property condition disclosure and education.

Owners of office buildings, factories or other properties where children don't live or play should be allowed to opt out of mandatory testing for lead-based paint when repairs and renovations are undertaken. Unlike residential housing, children do not spend significant time in these properties. Forcing commercial properties to hire more specialized and expensive contractors to provide routine repairs and maintenance

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

without any public health benefit is unnecessary.

To learn more, visit: www.nar.realtor/lead-based-paint.

Opposition Arguments:

Opponents of NAR's policyassert that more regulations are necessary to protect homeowners from lead paint hazards. The Disclosure Rule is focused on known lead paint hazards in the home and also allows the prospective buyer to choose whether or not to move forward with an inspection. Likewise, the renovation, repair and painting program protects pregnant women and children from lead paint poisoning caused by property renovations, including those present in commercial properties. While both groups may spend less time in commercial properties, any risks that do exist should be minimized, especially given the significant health risk posed bylead hazards.

Legislative/Regulatory Status/Outlook

EPA Lead-Based Paint Round-Up

The EPA has recently made updates and changes to the following regulations and documents related to lead-based paint, including the lead hazard pamphlet, the Renovation, Repair and Painting program and the Lead-Based Paint Disclosure form.

EPA Updates Lead Hazard Pamphlet

The EPA recently released an updated version of its lead hazard pamphlet titled *"Protect Your Family from Lead in Your Home"*.

The Residential Lead-Based Paint Hazard Reduction Act requires sellers and landlords to provide buyers and tenants with:

- A lead-based paint disclosure form,
- Any known records or reports of lead hazards, and
- The EPA-approved lead hazard pamphlet

These requirements apply to most residential properties built before 1978 when lead-based paint was banned. EPA does not require users to discard older versions of the document. EPA encourages users to exhaust their existing stock prior to printing copies of the new version.

The updated pamphlet includes information on new lead health standards, including:

- Revised dust-lead hazard and action levels,
- Updated terminology and definitions related to lead abatement, and
- Expanded guidance on identifying and managing lead exposure risks

This requirement applies broadly to pre-1978 housing, including single-family residences, rentals, multi-family buildings and condominium units leased by owners. The disclosure form and pamphlet are still

required regardless of whether lead hazards are known to exist.

EPA Updates the Renovation, Repair and Painting (RRP) Rule

The RRP Rule - effective since 2010 - applies to work that disturbs painted surfaces in housing or child-occupied facilities built before 1978. The purpose of this rule is to protect occupants, especially children, and contractors from lead hazards. Recent changes to this rule now require more property management companies (PMCs) to become certified in RRP-related lead-safe work practices.

If a property management company hires contractors to perform renovation work, **or** uses its own maintenance staff to perform repairs, and that work disturbs more than six square feet of interior painted surface per room, or twenty square feet of exterior painted surface, then the company may be considered a "firm" under RRP.

In addition, when a PMC hires a firm for RRP activities, the PMC is typically compensated for managing certain activities that are necessary to perform the RRP activity, including (but not limited to):

- Soliciting and evaluating contractor bids,
- Applying for permits, as appropriate,
- Granting contractors access to the property,
- Overseeing contractor work on the property and
- Informing tenants of renovation activity

The PMC may even oversee or supervise the outside renovation firms, individuals and contractors who are not the PMC's employees but are doing activities that are recognized as part of the renovation in theRRPrule.

Compensation of a PMC by the property owner for any of these or similar activities may establish that a PMC is performing a renovation for compensation and must comply with theRRPrule, even if the PMC uses an independent contractor instead of its own employees to do the specific activities that disturb paint surfaces.

EPA Updates the Lead-Based Paint Disclosure Form

In April, 2024, the EPA finalized changes to the Lead-Based Paint Disclosure Form. Before a contract for housing sale or lease is signed, federal law requires sellers, landlords, real estate agents, and managers of rental properties to disclose any known information concerning the presence of lead-based paint and lead-based paint hazards.

The EPA revised the disclosure forms to make them clearer and reduce common errors when completing them. These revisions do not change the substantive information requirements under the law, but they do change the wording and format to make compliance easier.

For example:

- **"Describe what is known" replaces only yes/no checkboxes:**
  Rather than just marking boxes indicating whether lead-based paint or hazards exist, the new form

now prompts sellers and landlords to *describe what is known* about the presence and condition of lead-based paint and associated hazards. This helps provide *more useful* information to buyers and renters.

- **Clearer initialing requirements:**
  The form now uses initial lines (instead of checkboxes) for sellers, landlords, and buyers/renters in certain sections. Initials help avoid confusion about who made each disclosure and acknowledgment.
- **Expanded "Agent's Acknowledgement" section:**
  The revised form has a more detailed acknowledgment area where real estate agents must indicate that they have informed their client (seller or lessor) of their obligations under federal law and understand their compliance responsibilities. This was previously more limited or ambiguous.
- However, in their efforts to make the form clearer and less ambiguous, the EPA may have made other areas more confusing, especially section (g) on the seller form and section (f) on the lessor form. This is the "Agent's Acknowledgement" section, which has been updated to include the following:

- Seller sample disclosure form: "Purchaser's Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance."

- Lessor sample disclosure form: "Lessee's Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance."

The concern here is that, due to a shifting legal landscape, a purchaser's agent communicating with the seller, for any reason, is highly unusual and may run afoul of state law and NAR's Code of Ethics that govern these interactions.

NAR is working with the EPA to resolve these ambiguities and clarify the responsibilities of the agents involved in the transaction. NAR wants to ensure that they are successfully complying with this requirement.

Legislative Contact(s):

Ryan Rusbuldt, rrusbuldt@nar.realtor, 202-383-1196
Russell Riggs, rriggs@nar.realtor, 202-383-1259

Regulatory Contact(s):

Russell Riggs, rriggs@nar.realtor, 202-383-1259