

The Philadelphia Code – Chapter 6-800. Lead Paint Disclosure and Certification An Ordinance – Bill No. 100011-A

The purpose of this legislation is to provide an educational tool, which will assist the Department of Health in identifying, reducing, and combating lead poisoning in Philadelphia children. The task of eliminating lead from those properties that house children will be a costly one and will require a public/private collaboration and partnership in order to preserve and to protect Philadelphia's affordable housing stock.

Philadelphia had previously adopted a "disclosure" law offering protections very similar to those of Section 1018 of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992. Bill No. 992 was approved on June 21, 1995 and took effect on October 28, 1995. The 2011 amendments to the Philadelphia law significantly advance primary prevention by adding new inspection and certification obligations to those disclosure requirements with which landlords must comply.

Philadelphia adopted a pragmatic approach in its attempt to address the concerns of both lead poisoning prevention advocates and the business interests that will be affected. The pragmatic character of the law is manifest in specific measures to influence owner behaviors, including significant penalties for non-compliance. Additionally, the law includes some practical measures that are likely to increase awareness and effectiveness of the intended protections. Finally, the law anticipates potential for abuse and includes quality control initiatives in the form of authorizing audits by the city.

Definitions.

Certified Lead Inspector – A person who is certified by the Philadelphia Department of Public Health as qualified by training and experience to conduct comprehensive lead inspections and risk assessments, or by the Commonwealth of Pennsylvania as an "inspector-risk assessor" pursuant to the Pennsylvania Department of Labor and Industry's Lead-Based Paint Occupation Accreditation and Certification Regulations; or is certified by the EPA and trained as a lead dust sampling technician.

Deteriorated Paint – Paint or other coating that is cracking, flaking, chipping, peeling, chalking, not intact, or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated coating.

Lead-Free – The circumstance in which the interior and exterior surfaces of a property do not contain any lead-based paint and the property contains no lead-contaminated soil or lead-contaminated dust.

Lead-Safe – The circumstance in which a property is free of a condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint, deteriorated presumed lead-based paint, or other similar threat of lead exposure due to the condition of the property itself.

Target Housing – Relating to lease agreements, residential property built before March 1978, but excluding: (a) dwelling units developed by or for an educational institution for the exclusive residential use and occupancy by that institution's students; (b) buildings containing dwelling units all of which are leased only to students enrolled in a college or university degree program; (c) dwelling units owned or subsidized by the Philadelphia Housing Authority or its subsidiaries, or privately owned but currently leased under the Housing Choice Voucher Program and therefore subject to federal requirements administered by

HUD; and (d) dwelling units in which children aged six and under do not and will not reside during the lease term.

Valid Certification – For a certification that a property is lead-safe, the inspection date must be no more than 24 months prior to the date of the lease is entered into. For a certification that a property is lead-free, there is no time limit on the inspection date.

Renter Protections and Disclosures.

Before signing a lease agreement to rent any Targeted Housing, the lessor must provide the lessee and the City Health Department with a valid certification prepared by a certified lead inspector stating that the property is either lead-free or lead-safe, and the lessee shall acknowledge receipt of this certification by signing a copy. This provision excludes lease renewals.

- A lead-safe certification shall state that a certified lead inspector (1) determined the property or unit to be free of any deteriorated paint and (2) collected interior dust samples in compliance with EPA regulations and determined from test results that it does not contain lead-contaminated dust.
- After the above lease agreement is signed, the lessor shall (1) provide a copy of the signed certification to the Department of Public Health; and (2) provide to the tenant a written notification advising the tenant to perform a visual inspection of all painted surfaces periodically during the term of the lease, and advising that the tenant may inform the lessor of any cracked, flaking, chipping, peeling, or otherwise deteriorated paint surfaces. Once notified the lessor shall promptly inspect and correct any defective conditions as required by the Philadelphia Property Maintenance Code.

Right to Terminate a Purchase Contract or Lease Based on an Inspection or Risk Assessment Report.

In all contracts for the purchase of residential housing constructed prior to 1978, the following must be provided in writing: (1) the buyer has a 10-day period to obtain a comprehensive lead inspection or risk assessment from a certified lead inspector at buyer's own expense; (2) should the inspection reveal lead-based paint or lead-based paint hazards, the buyer has the right to terminate the purchase contract within five days of receipt of inspection report, with a refund of all deposit moneys paid; (3) buyer's failure to timely act on (1) and/or (2) above will constitute a waiver of buyer's right and contract will remain in full force and effect.

In all contracts for the lease of residential housing constructed prior to 1978, the following must be provided in writing: (1) the lessee has a 10-day period to obtain a comprehensive lead inspection or risk assessment from a certified lead inspector at lessee's own expense; (2) should the inspection reveal lead-based paint or lead-based paint hazards, the lessee may terminate the lease within two business days of receipt of the inspection report, with a refund of all monies paid; (3) lessee's failure to act in a timely fashion on (1) and/or (2) above will constitute a waiver of the right to conduct an independent inspection, and the lease will remain in full force and effect.

In a renewal of an existing lease, the renewing lessee has the same right to conduct an inspection or risk assessment as a new lessee, except the renewing lessee is afforded a 10-day period to notify lessor of intent to terminate the lease. Additionally, the renewing lessee has up to 90 days after receipt of the comprehensive lead inspection or risk assessment to actually terminate and vacate the premises.

Remedies and Penalties.

The Philadelphia ordinance incorporates a private right of action for a tenant to go to court to require a non-complying landlord to provide the required inspections and certification. However, the range of hefty penalties is more likely to influence landlord compliance decisions and behaviors. The recent amendments increased fines from a maximum of \$300 to \$2,000 per offense, with each day of non-compliance treated as a new offense. The separate remedies provision, §6-809, was amended to include additional sanctions. When a landlord fails to provide the required certification, that landlord is denied the right to collect rent for the period of non-compliance. To facilitate the private right of action, the ordinance provides that the tenant may be awarded:

1. The costs incurred for obtaining an inspection and remediation of hazards;
2. Damages for harm caused by the failure to provide the required certification;
3. Exemplary damages of up to \$2,000;
4. Abatement and refund of rent for the period the lessee occupies the property without certification;
and
5. Attorneys' fees and costs.

The later provision may incentivize private attorneys to accept these cases and thus enhance the likelihood they will be initiated.

Establishment of “Lead Court.”

The judicial system in which the Philadelphia law will be enforced may add to the likelihood of its success. In November of 2002, Philadelphia established a “lead court” under the Lead Abatement Strike Team Program of the Philadelphia Department of Public Health. The Lead Court is part of the Philadelphia court system to which lead hazard enforcement cases are assigned.

Additional information, including flyer and required postings, can be found on the city’s website at <http://www.phila.gov/health/childhoodlead/>