

## District of Columbia's Lead Prevention and Elimination Statute

### District of Columbia Official Code: Division I. Government of District Title 8. Environmental and Animal Control and Protection Subtitle A. Environmental Control and Protection Chapter 2A. Lead-Hazard Prevention and Elimination.

In 2008, the District of Columbia responded to community concerns about high rates of children with lead poisoning by adopting a local law, the Lead Hazard Prevention and Elimination Act, as amended in 2010. The amended Act became effective March 31, 2011, and is found at D.C. Official Code §8-231.01 et seq. This law makes the presence of lead-based paint hazards illegal in all residential dwelling units, in common areas in multifamily properties, and in child-occupied facilities, such as day cares, built before 1978.

The law gives broad authority to the District government to enter such places and conduct a risk assessment. If a District official finds that a lead-based paint hazard is present, then the property owner will receive a Notice of Violation or of Infraction from the District, as well as an Order to Eliminate Lead-Based Paint Hazards, specifying where the hazard is located and how the owner must go about eliminating it.

Anyone engaged in eliminating lead-based paint hazards must abide by a set of work practices described in the new law and must at a minimum be trained in lead-safe work practices. Similarly, whenever a contractor (including painters, plumbers, electricians, carpenters, and others who work on housing) disturbs paint during the course of their work in a pre-1978 property, they must use lead-safe work practices and must "contain" the immediate work area so that no dust or debris is spread beyond it, and so that occupant's belongings and well-being are protected.

#### **Definitions.**

Deteriorated paint – Paint 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 paint.

Person at risk – A child under age six or a pregnant woman.

Presumed lead-based paint – Paint or other surface coating affixed to a component in or on a dwelling unit or child-occupied facility, constructed prior to 1978.

Clearance report – Report issued by a risk assessor, a lead-based paint inspector, or a dust sampling technician that finds that the area tested has passed a clearance examination, and that specifies the steps taken to ensure the absence of lead-based paint hazards, including confirmation that any encapsulation performed as part of a lead hazard abatement strategy was performed in accordance with the manufacturer's specifications.

The District law imposes on property owners the duty to maintain the premises free of lead-based paint hazards. The law also expanded the definition of a hazard to include "deteriorated lead-based paint or

presumed lead-based paint” and “lead-based paint or presumed lead-based paint that is disturbed without containment.” Paint in a pre-1978 structure is considered presumed lead-based paint unless proven otherwise.

### **Target Housing.**

- All pre-1978 rental and owner-occupied units with phased-in implementation.
- “Lead hotspots” for proactive inspections based on historic elevated blood lead levels data and on current elevated blood lead level cases.
- Foster care home applicants involving child under six years of age.

### **Clearance at Rental Unit Turnover.**

The owner of a dwelling unit constructed before 1978, in which the unit will be occupied or regularly visited by a person at risk, shall provide to the tenant an accurately and fully completed lead disclosure form and a clearance report issued within the previous 12 months. This report indicates that there are no lead-based paint hazards in the unit. The required disclosure shall be provided prior to the tenant obligating under any contract to lease the dwelling unit.

- If the tenant of a dwelling unit constructed before 1978 notifies the owner in writing that a person at risk lives or frequently visits the premises, the owner shall provide the tenant within 30 days a clearance report issued within the previous 12 months.

Important exemptions exist for property owners who are subject to these turnover requirements. First, they are exempt from having to produce a clearance report if they have documentation from a risk assessor or a lead inspector “certifying that the unit is a lead-free unit.” Second, they are also exempt if they have already produced three clearance reports for a given unit, at least a year apart from each other, within the previous seven years. However, this second exemption does not apply if the property owner is or was subject to any housing code violations during the previous five years (see §8-231.04(d)).

### **Risk Assessment Requirements.**

The District will conduct a risk assessment of the appropriate properties under the following circumstances:

1. A child under the age of six with an elevated blood lead level resides in or regularly visits a dwelling unit or child-occupied facility in the District, or upon reasonable belief that any other property located in the District may have contributed to a child’s lead exposure.
2. Upon reasonable belief, based upon a request by a tenant or other information, that there is risk of a lead-based paint hazard in a dwelling unit, accessible common area, or child-occupied facility constructed before 1978 (primary).

The “reasonable belief” that is necessary for these risk assessments to occur can be based on anything ranging from a complaint that peeling paint is present in a pre-1978 residential property, to knowledge that a particular neighborhood contains an above-average amount of poorly maintained housing. This ability for District Government inspectors to proactively search for lead hazards and require their elimination represents a major new tool for the District, helping prevent exposure to lead before a child is harmed. It’s also important to note that the law contains no requirement that a child must be present

(either as a resident or as a regular visitor in order for a lead risk assessment to occur in residential buildings.

### **Right of Entry to Inspect.**

mayor has the right, subject to permission of the occupant of the premises or a court issued warrant, to enter any property or inspect any activity upon reasonable belief of imminent threat to the health and safety of the occupants of the property. Right of entry and inspection shall be for the following:

- To conduct a risk assessment of inspection;
- To collect dust, paint chips, soil, or other environmental samples and submit them for laboratory analysis;
- To inspect or copy any reports from certified personnel that the owner is required to retain under this chapter;
- To inspect any interior or exterior surfaces;
- To verify compliance with this chapter or rule implementing the chapter otherwise;
- For any reason related to ensuring the safety of occupants after detection of an elevated blood lead level in the occupants of, or persons who regularly visit, the property.

If the mayor is denied access to conduct a risk assessment, a court ordered search warrant may be obtained. An owner's denial of access to conduct an inspection in accordance with the section shall constitute a violation of this section, and the owner shall be subjected to civil, criminal, and administrative penalties in accordance with this statute.

### **Repair and Relocation Requirements.**

Once a hazard has been identified, the District must send a compliance notice and order which requires that the landlord get the repairs done, pass a clearance examination, apply for a permit if abatement is required, and use trained workers and lead-safe work practices. The order also advises the landlord of relocation obligations for tenants.

- Relocation – The property owner must offer temporary comparable alternative arrangements for the relocation of any person at risk who is a tenant residing at the property, according to the following guidelines:
  1. Expenses – The owner shall pay all reasonable temporary relocation expenses that may be required until the dwelling unit has passed a clearance examination and a reasonable amount of time has passed to allow the tenant to return to the dwelling unit, unless a risk assessment report issued by the mayor states that temporary relocation is not necessary.
  2. Notice – The District shall provide the tenant with copy of temporary relocation order within five days of issue, and the owner shall provide the tenant with 14 days written notice prior to relocation, unless a shorter period is ordered by the mayor or agreed to by the owner and tenant. The owner's notice to tenant must include address of the temporary unit and a statement that the tenant has the right to return to unit at the end of the lead elimination work.
  3. Temporary relocation – The owner shall make reasonable efforts to find a temporary unit within the same housing accommodation, in the same school district or ward, and near public transportation, as appropriate. In lieu of relocation to a dwelling unit identified by the owner, the tenant may agree to make alternative arrangement for temporary

relocation.

- Owner shall comply with the requirements within 30 days of receipt of a written order from the mayor. The 30-day time period may be extended by the mayor in response to a timely written request for extension from the owner or tenant.
- Upon completion of the work ordered by the mayor, the owner shall submit to the mayor and tenant a clearance report that has been completed by a risk assessor. If the elimination of the lead-based hazards requires interim controls, the mayor may require the owner to submit a clearance report periodically.
- Clearance examination following elimination of a lead-based paint hazard ordered by the mayor, or performed in response to a child with an elevated blood lead level, may not be performed by a person who is either (a) related to the owner or any tenant by blood or marriage, (b) an employee or owner of the abatement firm performing the work,; or (c) an employee or owner of the entity in which the abatement firm has a financial interest. Only an inspector or risk assessor may perform clearance after such activities. In all other situations where a clearance examination is required under this chapter, the clearance examination may be performed by a lead inspector, dust sampling technician, or risk assessor, whether or not employed by the owner.

#### **Disclosure.**

The lead disclosure element of the DC law imposes a slightly higher obligation on landlords than the federal law with respect to their obligation to disclose known hazards. This provision narrows a loophole in the federal disclosure law, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. That law essentially allows landlords to say they do not know whether a property has hazards. The District's law adds a somewhat tougher standard, namely that the landlord shall "disclose to tenants information *reasonably known* to the owner," and that the landlord must notify tenants of the discovered presence of lead-based paint in their unit within 10 days of such discovery.

The owner of a dwelling unit constructed before 1978 shall disclose to the purchaser or tenant of the dwelling unit information reasonably known to the owner about the presence of any of the following conditions in the unit:

- Lead-based paint;
- Lead-based paint hazards; and
- Pending actions ordered by the mayor pursuant to this chapter.

The disclosures shall be made before the purchaser or tenant is obligated under any contract to purchase or lease the dwelling unit.

#### **Tenant Education Requirement.**

The District's law requires that landlords provide their tenants with a Tenant Rights form developed by the D.C. lead program, informing all tenants in pre-1978 housing of their rights under the law. This requirement is triggered "whenever the tenant executes or renews a lease for the unit and whenever the owner provides notice of a rent increase."

To implement these groundbreaking provisions of the new lead law, the District government has issued a disclosure form that property owners must use, as well as a form that describes tenants' rights under the new law. Provided with forms, are guidance documents on how property owners should proceed in filling out the disclosure form, and what key differences are between the District's local disclosure requirements and those required by the Federal government.

Additional information, including flyer and required postings, can be found on the city's website at <http://ddoe.dc.gov/service/lead-related-regulatory-and-legislative-affairs>  
<http://ddoe.dc.gov/publication/lead-hazard-prevention-and-elimination-act>