

# **MODEL STATE/LOCAL LEAD DISCLOSURE LAW**

**2003**

**ALLIANCE FOR HEALTHY HOMES**

*Protecting Children from Lead and Other Environmental Health Hazards*





## Introduction

Childhood lead poisoning is a devastating illness caused primarily by exposure to chipping and peeling lead-based paint and lead-contaminated dust in housing. Children poisoned by lead suffer from reduced intelligence and attention span, hearing problems, learning disabilities, and behavior problems. Children are especially vulnerable to lead-based paint hazards because they ingest lead-contaminated dust through normal hand-to-mouth behavior and their developing bodies are prone to permanent damage. The social and medical costs associated with childhood lead poisoning are staggering, yet this disease is entirely preventable. Federal, state, and local governments can prevent childhood lead poisoning by enacting strong laws and policies that increase awareness about the disease and trigger action to prevent and control lead hazards.

This Model Law is designed to educate the public about lead hazards through mandatory disclosure of information about lead-based paint and lead hazards in housing. This Model Law requires that homebuyers and tenants receive information about lead-based paint to enable them to make informed housing choices. Disclosure also assists parents and caregivers in taking steps to reduce hazards and limit children's exposure to lead.

This Model Law codifies and strengthens the federal disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (implemented by HUD and EPA regulations at 24 CFR Part 35 and 40 CFR Part 745). State and local governments benefit by enacting local disclosure laws because they lack power to enforce the federal disclosure law (which can be enforced only by EPA, HUD, and aggrieved buyers and tenants). Currently, HUD and EPA have neither the staff nor the resources to pursue actions against all violators of the federal Disclosure Law. Complementing federal law with state or local disclosure requirements can strengthen enforcement and compliance with disclosure requirements and provide supplemental funding for state and local programs through penalties. State or local disclosure laws also can offer more protection than the federal disclosure law. For example, this Model Law requires daycare centers to disclose the presence of lead-based paint and hazards to parents, a requirement not found in the federal law.

Although this Model Law can serve as a powerful tool for state and local lead poisoning prevention efforts, it is limited in that it only mandates disclosure. This law does not require property owners to investigate or control lead-based paint hazards, important requirements that need to be addressed by other laws and regulations. For this reason, it is important to use this Model Law in conjunction with other, more encompassing federal, state, and local lead poisoning prevention laws. Many states and cities have laws that mandate control of lead hazards, require lead-safe work practices during work that disturbs painted surfaces, and prevent lessors from retaliating against tenants. Those working to enact a state or local disclosure law should take advantage of the momentum and support generated to shore up weaknesses in other state or local laws, including landlord-tenant laws (e.g., rent escrow and receivership), housing codes, and lead poisoning prevention laws. Other model laws addressing additional lead poisoning prevention strategies are available.<sup>1</sup>

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<sup>1</sup> Model State Law- *Lead Poisoning Prevention Act*. A product of the Alliance to End Childhood Lead Poisoning and the Conservation Law Foundation. (1993), and The Residential Lead-Based Paint Hazard Evaluation and Control Act: Model Legislative Language, National Conference of State Legislators (1996).

The language of this Model Law should be adapted to reflect state and local characteristics. While this law suggests giving primary enforcement authority to the Department of Health or the Department of Housing, each jurisdiction must determine the agency best suited to enforce this Model Law. Ideally, enforcement of this law would be vested in a state or local agency that is already equipped to enforce housing codes or other lead poisoning prevention laws. It also is advisable to consult other state and local statutes before enacting this Model Law to ensure the provisions of this legislation/ordinance complement existing laws of your city or state.

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## SECTION 1 Findings

The [Legislature] [City Council] finds that:

1. Children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing and since they are more likely to ingest lead-contaminated dust through hand-to-mouth contact. Fetuses are also vulnerable to the effects of lead paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
2. Low levels of lead in a fetus or young child can lead to reduced intelligence and attention span, learning disabilities, hearing impairment, and behavior problems.
3. Children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.
4. Childhood lead poisoning causes enormous societal costs, including medical costs and special education costs.
5. In 1992, the United States Congress enacted The Residential Lead-Based Paint Hazard Reduction Act to address the problem of lead-based paint hazards in our nation's homes. Section 1018 of this federal law requires disclosure of known information about lead-based paint or lead-based paint hazards for most residential properties constructed before January 1978. The purpose of federal disclosure requirements is to educate the public about the hazards associated with lead-based paint in order to prevent incidence of childhood lead poisoning.
6. This [legislation] [ordinance] is intended to codify and supplement the disclosure requirements of Title X.

## SECTION 2 Purpose and Goal

1. The purpose of this [legislation] [ordinance] is to educate the public about lead-based paint hazards to allow consumers to make better-informed housing and daycare decisions.
2. The goal of this [legislation] [ordinance] is to reduce childhood lead poisoning in [name of city][name of state].

## SECTION 3 Definitions

*Agent* means any party who enters into a contract with a seller or lessor, for the purpose of selling or leasing pre-1978 housing.

*Certificate of Lead Safety* means a certificate from a certified risk assessor stating that a dwelling unit or childcare facility has been assessed for lead hazards and that no lead-based paint hazards exist.

*Certified Lead Inspector* means a person who is certified by [state] to conduct inspections for lead-based paint.

*Certified Risk Assessor* means a person who is certified by [state] to conduct risk assessments.

*Child Care Facility* means any facility constructed prior to 1978 that is licensed by [state][city] to provide day care or pre-school services to children under the age of six.

*Child Care Provider* means the owner or operator of a child care facility that is licensed by the [state][city].

*Common Area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry, and recreational rooms.

*Department* means the agency charged with enforcing the Model Law. In most areas, this will be the Department of Health or the Department of Housing.

*Director* means the [Director of Health] [Director of Housing].

*Lead-Based Paint* means paint or other surface coating containing lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

*Lead-Based Paint Free* means pre-1978 housing that has been found by a certified inspector to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

*Lead-Based Paint Hazard* means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse health effects. EPA regulations (40 C.F.R. § 745.65) specifically define lead-based paint hazards, including numerical standards for lead in dust, soil, and paint.

*Lead Free Certificate* means a certificate from a certified lead inspector stating that a dwelling unit or child care facility has been inspected for lead-based paint and no lead-based paint exists.

*Lead Hazard Evaluation Report* means any reasonably obtainable records and reports pertaining to lead-based paint and/or lead-based paint hazards in pre-1978 housing.

*Lead Poisoning Prevention Settlement* means a cash contribution or in-kind service to a project designed to advance primary prevention of lead poisoning, which a party agrees to in partial settlement of an enforcement action, but which the party is not otherwise legally obligated to perform.

*Lead Safe Work Practice* means the methods and standards designed to avoid the creation of lead-based paint hazards during work that disturbs painted surfaces in pre-1978 housing, including refraining from unsafe practices that generate lead-contaminated dust and incorporating

measures to protect occupants and workers and minimize the dispersal of lead-contaminated dust. (For more information see 24 C.F.R. §35.) HUD and EPA have developed training courses on lead safe work practices.

*Lessor* means any individual or entity that offers housing built before 1978 for lease, rent, or sublease.

*Risk Assessment* means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: a visual inspection; limited wipe sampling; and other activity as may be appropriate.

*Tenant* means any person or entity that enters into an agreement to lease, rent, or sublease housing built before 1978.

*Violation* means an individual's failure to comply with any requirement of this Model Law. (Failure to comply with any provision of this model law constitutes a separate violation.)

## SECTION 4 Education and Outreach

### 1. Information

The Director shall inform the public, including owners of residential property being sold or leased, their agents, and child care providers of their rights and responsibilities under this [legislation][ordinance].

### 2. Pamphlet

The Health Department shall make available the EPA educational pamphlet entitled "Protect Your Family From Lead in Your Home." The Department shall prepare an insert to accompany the EPA pamphlet. The insert shall summarize the provisions of this [legislation][ordinance] as well as any other [state][local] lead poisoning prevention laws.<sup>2</sup>

## SECTION 5 Disclosure Obligations Prior to the Sale or Lease of Residential Property

### 1. Disclosure Obligations

Before a purchaser or tenant is obligated under any contract<sup>3</sup> to purchase or lease residential housing constructed prior to 1978, the seller or lessor shall:

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<sup>2</sup> An insert describing state and local lead poisoning prevention laws is highly recommended, as disclosure provides another opportunity to inform parties of their rights and responsibilities. Separate inserts should be designed for child care providers and sellers/lessors, since the disclosure requirements for these groups differ.

<sup>3</sup> Individuals become obligated under contract when they accept an offer or counter offer. In home sales, the buyer typically becomes obligated under contract prior to closing. Therefore, it is unacceptable to provide disclosure at closing. Providing disclosure at closing would make it impossible for purchasers to exercise their right to get the property inspected for lead-based paint.



- a. Provide the purchaser or tenant with the EPA lead hazard information pamphlet and an insert as prescribed by the [state][local] health department; and
- b. Disclose to the purchaser or tenant, both orally<sup>4</sup> and in writing, the presence of any known lead-based paint and/or lead-based paint hazards; and
- c. Provide the purchaser or tenant with a copy of any lead hazard evaluation reports; and
- d. Allow the purchaser or tenant at least 10 days to conduct a risk assessment or lead-based paint inspection of the property.

## 2. Acknowledgment

All contracts for the purchase or lease of property constructed prior to 1978 must contain an attachment, which includes the federal Lead Warning Statement and an Acknowledgment signed by the purchaser or tenant.

The Acknowledgment must state that the purchaser or tenant has:

- a. Read the Lead Warning Statement and understands its contents; and
- b. Received an EPA lead-hazard information pamphlet and [state][local] insert; and
- c. Received oral and written disclosure from the seller, lessor, or their agent concerning any known lead-based paint and/or lead-based paint hazards; and
- d. Received any lead hazard evaluation reports; and
- e. Had at least 10 days to conduct a risk assessment or inspection for the presence of lead-based paint and/or hazards in the property before becoming obligated under the contract to purchase or lease the housing.

## 3. Lead Warning Statement

- a. Every contract for sale of residential housing constructed prior to 1978 shall contain the federal Lead Warning Statement in large type on a separate sheet of paper attached to the contract. The Lead Warning Statement shall state as follows:

“Every purchaser of any interest in residential real property on which a residential dwelling was build prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quo-

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<sup>4</sup> Oral disclosure is intended to reach those individuals who are illiterate or unable to read.

tient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

- b. Every contract for lease of residential housing constructed prior to 1978 shall contain the federal Lead Warning Statement in large type on a separate sheet of paper attached to the contract or within the contract. The Lead Warning Statement shall state the following:

"Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."

#### 4. Disclosure to Agents

- a. A seller or lessor shall disclose to any agent working on behalf of the seller or lessor all known information about lead-based paint and/or lead-based paint hazards.

#### 5. Agents

- a. Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a residential dwelling constructed prior to 1978, the agent, on behalf of the seller or lessor, must inform the sellers of their obligations under this [legislation][ordinance] and ensure compliance with the requirements of this [legislation][ordinance].
- b. This section shall apply to any agent working on behalf of a buyer or tenant that receives all or partial compensation from a seller or lessor.
- c. Agents who have complied with their duties under this section shall not be liable for a purchaser or lessor's failure to disclose lead-based paint or lead-based paint hazards, so long as the lead hazards were not disclosed to the agent.

#### 6. Validity of the Contract for Sale

- a. Nothing in this [legislation] [ordinance] shall affect the validity or enforceability of any sale or contract for the purchase and sale of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

## 7. Exemptions

- a. Nothing in this [legislation][ordinance] shall apply to properties that are certified lead-based paint free by a certified lead inspector.
- b. Nothing in this [legislation][ordinance] shall apply to properties that are used for dormitory housing, unless children under six years of age to reside in such housing or are expected to reside there.
- c. Nothing in this [legislation][ordinance] shall apply to nursing homes or assisted living facilities.

## SECTION 6 Additional Provisions Regarding Rental Properties

### 1. Responsibilities of Lessors

Upon obtaining information subject to disclosure, lessors shall provide written notification to all building occupants regarding any lead-based paint and/or lead-based paint hazards found on the property.

### 2. Rights of Tenants

If lead hazards in the dwelling unit are not controlled within 30 days after disclosure takes place, the tenant may vacate the dwelling unit without violating the lease agreement.

## SECTION 7 Obligations of Child Care Providers

### 1. Inspections & Certificates of Lead Safety

All child care facilities must be inspected annually for the presence of lead-based paint and/or lead-based paint hazards by a certified lead paint inspector or certified risk assessor and must obtain a certificate of lead safety. A certified lead paint inspector shall, upon determining that the child care facility is free from lead paint hazards, issue a lead free certificate to the owner of the child care facility.

### 2. Disclosure

Child care providers must disclose the presence of any known lead-based paint or lead-based paint hazards in the child care facility to parents or guardians of enrolled children. Such disclosures must be made in writing within 10 days of a determination that lead-based paint or lead hazards are present, and prior to the enrollment of a child into the child care program.

### 3. Lead Hazard Control

A child care facility must remain inoperative while lead hazard control activities are on-going. A certified inspector or certified risk assessor must issue a certificate of lead safety to the child care provider before the child care facility can reopen.

### 4. Exemption

This section does not apply to child care facilities that have been certified lead free by a certified lead inspector.

## SECTION 8 Database of Properties that are Lead-Based Paint Free

The Department shall establish a database to track all properties that have been deemed lead-based paint free by a certified inspector. This database shall be accessible to the public.

## SECTION 9 Enforcement

The Department shall have primary authority for administering and enforcing this [legislation][ordinance].

### 1. Civil Fines

Any person who fails to comply with a provision of this [legislation][ordinance] shall be subject to a fine of no more than \$5000 for the first offense and no more than \$10,000 for each additional violation.

In determining the amount of any fine issued pursuant to this [legislation][ordinance] the [state][city] may consider any prior history of non-compliance, the willfulness of the violation, and the amount of damage or injury incurred as a result of the violation.

The Director is authorized to adjust or waive any fine pursuant to a Lead Poisoning Prevention Settlement. All Lead Poisoning Prevention Settlements must meet the approval of the Director.

### 2. Action by the Director

The Director is authorized to take such action as may be necessary to prevent any further violation of this [legislation][ordinance]. This may include ordering a property owner to perform lead hazard control activities.

### 3. Civil Liability

Any person who violates the provisions of this [legislation][ordinance] shall be liable to the purchaser in an amount equal to the cost of abatement, not to exceed a maximum award of \$10,000.

Any person who violates the provisions of this [legislation][ordinance] shall be liable to the tenant in an amount equal to the value of the lease agreement not to exceed a maximum award of \$5,000.

#### 4. Costs

In any civil action brought pursuant to this [legislation][ordinance] a court may award court costs and attorneys fees to the prevailing party.

#### 5. Injunctive Relief

Any person whose rights under this [legislation][ordinance] have been violated is entitled to injunctive relief if such relief is deemed necessary by a court to prevent irreparable harm to the injured party. For tenants who have not received adequate disclosure, this could include voiding the lease agreement, refunding rent money, or ordering the property owner to control lead hazards.

#### 6. Severability

If any provision of this [legislation][ordinance] is held invalid, the remainder of the [legislation][ordinance] shall not be affected.