

**ALLIANCE FOR HEALTHY HOMES**

*Protecting Children from Lead and Other Environmental Health Hazards*



# **Effective Practices for Enforcing Codes to Ensure Decent Housing Condition**

**Revised August 2006**

## **Effective Practices for Enforcing Codes to Ensure Decent Housing Condition**

### **Introduction**

This report provides summaries of and citations for some of the nation's most innovative state and local policies and programs that help speed enforcement and compliance for lead hazard control and other housing code enforcement orders related to dangerous and hazardous conditions. These strategies have been implemented in a variety of areas throughout the country and include well-designed enforcement measures, more efficient use of existing mechanisms and processes, partnerships, financial incentives for property owners served with lead hazard control and housing code enforcement orders, and more.

For each practice or program, the report identifies the city or state where the practice or program is being used, provides a one-line descriptor, summarizes the program, and provides a citation for each program or practice.

We originally compiled this report in November 2005 for the Greensboro Housing Coalition and the City of Greensboro to support their efforts to improve the efficiency and increase the positive impact of the city's lead laws and housing code for the children of Greensboro. We hope that this report will prove useful to others, and we will continue to update and revise it as more innovative strategies are implemented throughout the nation.

## **1. Philadelphia: Abating Lead Hazards and Recovering Costs when Rental Property Owners Fail to Act**

Title 6 of the Philadelphia Code and Regulations gives the city's Department of Public Health the authority to issue correction orders to owners (or their agents) of housing units found to have lead-based paint hazards. If an owner does not comply with the order, the City files a case in Philadelphia's special "lead court." The city may seek a range of remedies, including the use of City funds to abate the hazard and recovery of those costs from the owner. If the property owner fails to reimburse the city, the court may place a lien on the subject property for the amount of abatement costs and other related expenses. This process has been a powerful motivator for property owners, who are now more likely to proactively correct lead hazards—or at least comply with orders before the case gets to court.

*Source: Title 6, Philadelphia Code and Regulations*

## **2. Philadelphia: Effectively Using a Lead Court**

Three days a week, a special Lead Court convenes within Philadelphia's Court of Common Pleas to hear complaints regarding outstanding lead hazard orders; each session hears an average of 20 cases. City attorneys set forth all possible remedies available to the city under the various codes, including fines; relocation of tenants at the owner's expense; and, if the owner fails to abate, abatement by the city with authorization to recover costs or place a lien on the property. The potential for court action acts as a great motivator: in the majority of cases, owners have begun the work prior to the hearing, and typically the court responds by ordering that the property owner complete the work by a specified deadline. In instances where the city has had to do the abatement work, the court works out payment plans with property owners to recoup the cost.

When the lead court began in November 2002, a backlog of 1,426 cases existed. As of February 2004, the lead court had heard 943 cases. More than 650 orders have been completed. The City of Philadelphia has five times the compliance it had before the creation of the lead court. The potential for replication in other parts of the country, including Greensboro, is high as long as the key public agencies are willing to make it happen.

*Sources: Philadelphia Court of Common Pleas; Philadelphia Law Department*

## **3. Milwaukee: Deploying Grant Incentives to Help Speed Compliance with Lead Hazard Enforcement Orders**

The City of Milwaukee created the Milwaukee Pilot Ordinance in 1999 to eliminate all lead hazards in pre-1950 homes in two high-risk neighborhoods, and the program ran through April 2002. All rental property owners were required to register their properties in the program. For each property, the Health Department conducted a risk assessment and documented the scope of work needed. The City funded lead safety treatments of windows (or, rarely, their replacement); the owners were responsible for all other required work. The City used certified workers for window repairs; the owners could do the other work

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themselves. All properties passed City-administered clearance examinations and received certificates of lead safety.

Lead hazard control was completed in 800 units in one year. The owners of approximately 50 units were taken through the court system. This strategy can be easily replicated wherever there is a strong commitment from political leadership and staff to work with reluctant landlords to quickly and effectively comply with enforcement orders using a “carrot-and-stick” approach.

*Source: Milwaukee Health Department*

### **4. Cleveland: A Comprehensive Lead Poisoning Prevention Ordinance to Empower Local Agencies, Tenants, and Community-Based Organizations**

The Cleveland City Council passed a new lead-based paint ordinance in August 2004 that, among other provisions, made lead paint hazards in residences, schools, and day care facilities a “nuisance” subject to city code enforcement; established city lead hazard disclosure requirements and penalties; created a property certificate program as an incentive for property owners to eliminate lead hazards; and allowed the city to regulate exterior paint removal through their permitting process for most pre-1978 properties.

The law makes lead paint hazards (as defined in state regulations) in residences, schools, and day care facilities a “nuisance” under city code, which empowers the city environment commissioner to require the property owner to immediately control the hazards. If the owner fails to act, the commissioner can send a contractor to abate the hazard and assess the costs to the owner by placing a lien on the property.

The ordinance also incorporates the federal lead hazard disclosure law into city code. It gives individuals harmed by the property owner the ability to recover triple damages, and it authorizes nonprofit groups to pursue damages on behalf of individuals. The ordinance also gives the Cleveland Department of Public Health authority to pursue criminal penalties (up to \$5,000 per violation) against property owners who fail to distribute the EPA lead hazard information pamphlet, disclose the known presence and location of any lead-based paint or hazard, or fulfill other duties under the federal lead hazard disclosure law.

In addition, the ordinance includes a voluntary certificate incentive program for property owners. With proof of a lead inspection, owners of property built before 1978 can obtain a Lead-Free Certificate, granting the owner the legal presumption that the property is free from lead-based paint and lead hazards. For property constructed before 1950 that meets the Essential Maintenance Practices requirements defined in state law, owners can obtain a Lead-Safe Maintenance Certificate which states that the property does not contain a lead hazard but is not certified as lead-free. To obtain either certificate, property owners must meet stringent inspection requirements, and they must abide by all disclosure provisions in order to retain their certificates. Lead-Free Certificates are valid unless they are revoked by the city; Lead-Safe Maintenance Certificates must be renewed annually. Both types of certificates transfer

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with property ownership, but the new owner must notify the city, pay a small fee, and comply with all the conditions for maintaining the certificate.

The law also requires city permits for residential interior or exterior lead hazard abatement projects and for exterior lead paint removal in pre-1978 housing, except for owner-occupied properties under certain conditions, housing exclusively for seniors or persons with disabilities, and zero-bedroom units. Both the city environment department and the city code enforcement agency are given authority to issue stop work orders if a permit has not been obtained or if work is not being done in compliance with state lead safety standards and methods.

*Source: Cleveland City Ordinance 1027-04*

### **5. New Jersey: Funding Lead Hazard Control and Abatement Work**

On Jan. 12, 2004, the New Jersey Legislature passed the Lead Hazard Control Assistance Act, which has since come into force through regulatory implementation by the Department of Community Affairs. The Act authorizes a \$10 million annual fund to evaluate and control lead-based paint hazards in low-income housing, and offers low-interest loans and grants for abatement and hazard mitigation projects. The sources of funding for this are a set-aside portion of the state sales tax collected on the sale of paint and a \$20 per rental unit fee collected from landlords collected every five years for properties of 3 or more units. The bill creates a separate fund to help relocate lead-poisoned children in emergency circumstances and establishes a registry of lead-safe housing.

*Sources: New Jersey Statutes Annotated Sec. 52:27D-437.6; New Jersey Administrative Code 5:48*

### **6. New Jersey: Requiring Lead Safety in Multi-Unit Rental Housing**

The New Jersey Lead Hazard Control Assistance Act also mandates lead hazard inspections for rental properties with three or more housing units constructed before 1978, unless they are certified as being free of lead-based paint. Inspections will occur in five-year cycles. Owners must be in compliance with state lead safety standards, and the law requires basic lead-safe work practices training and clearance dust testing for maintenance and repair work.

*Sources: New Jersey Statutes Annotated Secs. 52:27D-436, 55:13A-6(e), and 55:13A-7 (amends several subsections of New Jersey Administrative Code Secs. 5:10, 5:15, 5:17, and adds several subsections in Secs. 5:10, 5:17, 5:27, and 5:28)*

### **7. Rhode Island: Providing Technical Assistance on Lead Hazard Mitigation to Property Owners**

Rhode Island's new Lead Hazard Mitigation law requires the state to provide technical assistance to property owners who seek to comply with the law requiring the repair of lead hazards using lead-safe work practices and clearance. This law was enacted in 2003 and became effective on November 1, 2005. The Housing Resources Commission has crafted and

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is in the process of implementing a technical assistance plan. When the plan is fully implemented, the state will provide property owners with access to technical service centers. These centers will be “one-stop shops” where owners will be able to gain hands-on experience with lead hazard mitigation, work with technical assistance staff, and find resources on how to obtain financial assistance for making their properties lead-safe.

*Sources: Rhode Island General Laws Sections 42-128.1-5; State of Rhode Island Housing Resources Commission Lead Hazard Mitigation Regulations*

### **8. Los Angeles: Working Collaboratively for Primary Prevention of Childhood Lead Poisoning**

In March 2004, the Western Center on Law and Poverty and the Healthy Homes Collaborative, two non-profit organizations, completed two years work, culminating in the launch of the City of Los Angeles' lead poisoning prevention code enforcement pilot program. The pilot is the first housing code enforcement program in the state to *proactively* identify and repair lead hazards in housing before children are poisoned. But more than simply inspecting housing, the program embodies *collaboration* between local government and community to empower families to advocate for themselves.

Under this groundbreaking program, housing code enforcement inspectors require landlords to repair unsafe conditions (using state legal authority established under Senate Bill 460, Health & Safety Code §105256). Moreover, inspectors refer high-risk properties (older, poorly maintained buildings occupied by families with children) to community health promoters and tenant advocates who educate the families about environmental hazards in their homes, how to get their children screened for lead, how to identify unsafe repairs that can create lead hazards, and what their tenant rights are. The health promoters also refer eligible landlords to the City's lead abatement program to seek funding to make appropriate lead safe repairs.

When landlords fail to comply with initial repair orders or fail to use lead safe work practices, housing inspectors call in certified environmental health specialists from the County's lead program to document lead hazards. The City Attorney prosecutes repeatedly noncompliant landlords. The first criminal landlord prosecution was filed in June of 2005.

The program, currently operating in the five highest-risk council districts of Los Angeles, received expanded funding from HUD in October 2005.

*Source: California Senate Bill 460, Health & Safety Code Sec. 105256*

### **9. Massachusetts: Offering Tax Credits for Lead Hazard Control and Abatement Work**

The Commonwealth of Massachusetts' “deleading” income tax credit, which has been in place since 1994, offers a model for other states interested in helping residents pay for the cost of abating lead hazards. The owner of a residential property can claim a tax credit equal to the

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lesser of the cost of deleading, or \$1,500, for the containment or abatement of lead hazards, including the replacement of window units. A tax credit equal to the lesser of one-half of the cost of deleading, or \$500, is available to offset the cost of bringing the property into interim compliance, using interim control measures, pending full compliance. Several steps are necessary to claim the credit: the property must be inspected by a licensed inspector; the property is then “deleaded” by a MA-licensed contractor; a licensed inspector issues a letter of compliance or a letter of interim control; and the owner files a copy of the inspector’s letter with the owner’s income tax return. The tax credit is a dollar-for-dollar offset for the actual amount spent against taxes owed. Any unused portion of the credit may be carried forward from the year that a credit was first claimed to any of the next seven years. Some activities may be undertaken by a “qualified unlicensed individual” pursuant to State regulations.

*Sources: Massachusetts General Laws, Chapter 62, Section 6(e), as amended by St. 1993, c. 482; Massachusetts General Laws, Chapter 183A, Section 1; 830 Code of Massachusetts Regulations 62.6.3: Lead Paint Removal Credit (promulgated 4/11/03 and applies to taxable years beginning on or after January 1, 1994); Massachusetts Department of Revenue Directive 92-8: The Deleading Credit; Residential Condominium Common Areas and Facilities*

### **10. New York City: Initiating Emergency Repairs When Rental Property Owners Do Not Comply with Orders to Repair Immediately Hazardous Violations**

New York City law classifies a variety of housing code violations, including inadequate supply of heat and hot water, rodent infestation, peeling lead paint in dwellings where a child under 7 resides, broken or defective plumbing fixtures, defective plaster, defective faucets, and extreme water damage, as Class C immediately hazardous. The city Housing Code empowers HPD to address Class C conditions and contains procedures that allow the city to recoup money spent on repair and rehabilitation.

For example, under Chapter 14 of the New York City Housing Code (passed as part of Local Law 38), the city requires all rental property owners to comply with orders to repair lead hazards. Lead hazards are classified as a Class C condition, giving cited property owners 21 days to correct the problem. If landlords need more time, they can petition HPD for an extension, which gives them 60 days after the citation to repair lead hazards. When owners fail to take action, the city’s Housing and Preservation Department (HPD) sends in workers from its Emergency Repair Program, who use lead-safe work practices to correct the problem. HPD then places a lien on the property that is equal to the amount of materials and labor expended by the Department to repair the lead hazards. To clear the lien, the property owner must reimburse the city for the work it performed. Under the predecessor to current city law, between 2001 and 2003, HPD spent \$12 million on emergency repairs that property owners failed to complete within the deadline.

*Source: New York City Local Law 1 (2004)*

## **11. Rochester, NY: Combating Childhood Lead Poisoning Through Primary Prevention Code Enforcement Strategies**

Late in 2005, the City of Rochester passed a new lead poisoning prevention ordinance that, in part, uses more effective code enforcement to advance primary prevention. The ordinance, has several notable features:

- Mandatory visual inspection by city inspectors of all rental housing as part of the existing Certificate of Occupancy system, under which each building is inspected every five years
- Targeted implementation of the inspections in “high risk” areas'
- In the targeted areas, units that pass a visual inspection must also pass dust wipes and all units must be inspected by 2009
- Everyone conducting lead hazard reduction must have Lead Safe Work Practices training
- After work is completed, owners must obtain a clearance examination by a private lead sampling technician/risk assessor
- A Citizens Advisory Committee will provide input into the implementation process.

*Source: Rochester Introductory Ordinances 425A, 426A, and 427A.*

## **12. San Diego: Using a Powerful Combination of State and Local Laws to Address Substandard Housing Conditions**

The City of San Diego uses a mix of California and city law to address and remedy substandard housing conditions in San Diego. It's a powerful combination, enabling the city to issue violation notices for substandard housing conditions indicated by the presence of deteriorating lead paint, contaminated bare soil and/or lead dust. Enforcing both levels of law also allows violation notices for unsafe work practices, currently defined in California as inadequate containment in pre-1979 housing, with a statutory presumption that paint being disturbed on pre-1979 homes is lead-based. The city follows up actively on all substandard housing cases and requires appropriate hazard control within a tight timeframe. A separate city code enforcement authority also allows entry to any dwelling to verify code is being followed. This allows San Diego inspectors to patrol neighborhoods, looking for deteriorating exterior conditions, then noting the address, coming back to the office, and seeking access through the owner to inspect exterior and interior surfaces of the dwelling. Notices of violation typically follow where necessary.

*Source: San Diego Municipal Code, Chapter 5, Article 4, Division 10*

## **13. Boston: Collaborating to Eliminate Asthma Triggers in Housing**

In Boston, the new Breathe Easy program connects health care providers with Inspectional Services so that if an asthmatic child is identified and the health provider feels that the home may be contributing, and that there may be housing code violations, they refer the program using a database system to ISD, which then commits to respond with an Breathe Easy



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inspection within 48 hours. The results are accessible to the health care provider and ISD as well as the Boston Public Health Commission, which can offer additional assistance in connecting families with housing resources to repair homes.

*Sources: Boston Inspectional Services Department; Boston Public Health Commission; Ellen Tohn ([etohn@ertassociates.com](mailto:etohn@ertassociates.com))*

### **14. Los Angeles: Using a Systematic Enforcement Program to Address Healthy Homes Issues**

The City of Los Angeles, through its Rent Escrow Account Program, Utility Management Program, and Urgent Repair Program, contracts with the Coalition for Economic Survival, a community-based organization, to provide outreach to tenants living in substandard housing in order to assist those residents to force rental property owners to address housing code problems that threaten both life and health.

The programs use a financial “stick” approach, allowing renters to pay into the city’s rent escrow account while property owners have outstanding housing code violations, and allowing tenants a rent reduction for each month. When housing conditions are so dire as to be life-threatening and property owners refuse to make repairs, the city steps in and fixes the problem.

*Sources: City of Los Angeles Systematic Code Enforcement Program; Coalition for Economic Survival ([www.cesinaction.org/rso.html](http://www.cesinaction.org/rso.html))*

### **15. Washington State: Protecting Tenants and Providing Financial Disincentives to Spur Property Owner Action**

In April 2005, the State of Washington passed HSSB 5577, a bill that provides relocation assistance for tenants who are forced out of their homes when their landlords repeatedly fail to address pressing housing code violations, including rampant mold growth, carbon monoxide problems, and non-functional heating systems.

The bill also provides a financial disincentive for owners to ignore repeated housing code enforcement orders. Landlords who refuse to comply with enforcement orders are now required to pay \$2,000 or three times monthly rent (whichever amount is larger) to families forced to move due to their landlord’s actions (or inaction). If the landlord refuses to pay, the local government where the landlord’s property exists can step in, pay the tenants’ relocation fees, and then collect the money from the landlord, complete with interest and penalties. The law also requires landlords to refund 100 percent of all security deposits and prepaid rent to tenants.

*Source: Washington State Slumlord Accountability Act, HSSB 5577 (available at [www.l.leg.wa.gov](http://www.l.leg.wa.gov), under Bill Search and typing “HSSB 5577”).*

## **16. Charlotte and Mecklenburg County, North Carolina: Safeguarding Indoor Air by Requiring Carbon Monoxide Detectors in All Residences**

Mecklenburg County, which includes the City of Charlotte, has one of the longest-standing carbon monoxide (CO) ordinances in America. Updated in 2003, the ordinance requires CO detectors in all residences, regardless of energy source and regardless of whether residences have attached garages. Each residence, whether owned or rented, must contain at least one operable CO detector, and each detector must be battery-powered or have a battery backup if hard-wired. For landlords who have not yet complied, the ordinance requires them to install CO detectors before signing new or renewal leases; leases signed without installation of CO detectors are not valid.

Though not as wide-ranging as the Charlotte/Mecklenburg County ordinance, similar provisions exist in the City of Chicago and have been enacted recently in Massachusetts, New Jersey, Rhode Island, and Vermont.

*Source: Mecklenburg County Health Regulations Regarding Carbon Monoxide, Mecklenburg County Board of Health (available at [www.charmeck.org/Departments/Health+Department/Environmental+Health/Ordinances/Home.htm](http://www.charmeck.org/Departments/Health+Department/Environmental+Health/Ordinances/Home.htm))*

## **17. Minnesota: Enabling Tenants and Organizations to Take Legal Action to Address Substandard Housing Conditions**

Minnesota's landlord-tenant law, Chapter 504B, grants tenants, a municipality, or a neighborhood housing-related organization legal standing to bring a court action against a landlord who fails within a reasonable time to correct deficiencies at their property. Project 504, a nonprofit neighborhood organization, has brought more than ten such cases in the past three years, leading to broad remedies for tenants, including in some cases the appointment of a third-party administrator, or receiver, to manage and operate the property. Project 504's court actions established precedent that significant unabated lead hazards in a property constitute an emergency, causing the court to issue orders to the landlord to correct the hazards immediately. More than 200 families have directly benefited since 1999, with 200 additional units/families benefiting from the strategy's incidental effects on neighboring properties. Project 504's example has prompted the City of Minneapolis to pursue a similar strategy, leading to the filing of nearly 200 city-initiated cases since 2001.

*Source: Minnesota Statutes, Section 540B.395*

## **18. New York City: Promoting Guidelines to Assess and Address Excessive Mold Growth in Homes**

The New York City Department of Health and Mental Hygiene makes available to property owners and tenants a set of guidelines on assessing and addressing mold growth in homes. The guidelines provide direction on mold assessment, as well as steps to remediate and address excessive mold problems.

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Among other specific guidance, the guidelines direct occupants to directly address mold growth in bathrooms and kitchens through cleaning. However, the guidelines also stress the importance of addressing underlying problems that may not be caused by everyday sources. This includes ensuring that all bathrooms and kitchens are vented to the outside with a fan, all water leaks are promptly repaired, and all water-damaged building materials are replaced as quickly as possible.

The guidelines are available from the Department and can also be found online.

*Source: New York City Department of Health and Mental Hygiene Guidelines on Assessment and Remediation of Fungi in Indoor Environments (available at [www.nyc.gov/html/doh/html/epi/moldrpt1.shtml](http://www.nyc.gov/html/doh/html/epi/moldrpt1.shtml))*

### **19. San Francisco: Addressing Indoor Air Quality Problems through Inspection and Abatement**

The City of San Francisco, using both state and local laws, addresses air quality problems through inspection and, when necessary, city-operated abatement of substandard housing conditions.

State and local law define “substandard housing conditions” related to indoor air quality as excessive dampness in habitable rooms, infestation by insects and rodents, and/or the general dilapidation or improper maintenance of homes. To enforce state and local housing law, the city relies on authority to inspect properties whenever necessary to ensure compliance. If the city’s housing inspectors find violations related to indoor air quality, they are empowered to issue violation notices compelling property owners to repair and address the substandard housing conditions discovered. Should the property owner fail to address the problem within a reasonable time, the city has the option of initiating abatement procedures itself and charging the property owner for the work. These costs can include court-ordered monetary penalties. In extreme cases, the city can ask the municipal court to imprison property owners who wantonly disregard repair orders and fail to pay for city-operated abatement.

*Sources: California Health and Safety Code, Secs. 17910-17998; San Francisco Housing Code, Secs. 102-103, 401, 1001.*

### **20. Marion County, Indiana: Integrating Housing and Health Expertise to Ensure More Effective Housing Code Enforcement**

In Marion County, Indiana, the County Health Department implements a strong local housing ordinance through a combination of general housing inspections and support from a unit of the Department that specializes in indoor air quality issues. The result is an integration of housing and health expertise in the code enforcement process.

Indiana law and Marion County ordinances empower the County Health Department to, among other things, declare premises unfit for occupancy when housing-related health

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problems are extreme, and to order residences repaired and cleaned. A property owner who violates these orders can be forced to pay all enforcement costs and can be convicted of a misdemeanor should the Department press charges. The local law addresses problems including general disrepair that cause health hazards; pest infestation; plumbing leaks; improper ventilation in bathrooms and kitchens; and improper ventilation of fossil fuel combustion devices such as water heaters, furnaces, and gas ovens and stovetops.

*Sources: Indiana Code, Title 16, Article 41, Chapter 20; The Code of Health and Hospital Corporation for Marion County, Chapter 10.*

### **21. Cleveland: Using Receivership to Prompt Repair and Rehabilitation of Severely Distressed Housing**

In most housing code and lead hazard violation cases, given enough “carrots” and “sticks,” property owners will repair and rehabilitate their properties, bringing them into compliance and eliminating or at least minimizing housing-related health hazards. However, in extreme cases, property owners ignore all compliance orders, and cities do not have the financial resources and/or the authority to proceed with abatement work on their own. In Cleveland, the city’s Housing Court makes use of the process of receivership to prompt repair and rehabilitation of extremely substandard housing.

In such cases, the Housing Court typically uses Ohio’s receivership statute to appoint a Community Development Corporation (CDC) as “receiver” of distressed properties. As receiver, the CDC is charged with turning the properties back to productive use. This can be done through extensive repairs, full-building rehabilitation, or demolition and rebuilding.

There are several documented success stories to support this strategy, namely a 1999 case where the Housing Court named the Slavic Village Development Corporation receiver of 11 severely distressed properties in a racially diverse, working-class neighborhood. By June 2005, eight of the properties were converted to ready-to-build lots, and three of the houses were completely rehabilitated and reoccupied.

Similar receivership processes exist in cities such as Chicago and Minneapolis.

*Sources: Cleveland Housing Court; Ohio Receivership Law, ORC 3767.41*

### **22. Maryland: Providing Low-Interest Loans to Property Owners to Address Radon**

The State of Maryland’s Housing Rehabilitation Program, through its Radon Gas and Asbestos Abatement Pilot Program, provides low-interest loans to property owners engaged in rehabilitation projects to address and mitigate radon problems. The loans are focused on properties that provide housing to low-income families.

*Source: Maryland Code, Article 83B, Secs. 2-301-307*

**Additional information and reference sources**

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