

# Lead Poisoning & Residential Rental Property Disclosure Statement Questions & Answers

## **1. Are insurers required to cover lead poisoning liability claims resulting from lead in dwelling units, or can they exclude coverage of such claims?**

There is no single answer to this question. An insurer may decline to insure any premises for liability insurance of any kind. But, once such an insurer in the regular ("admitted") market elects to write liability coverage on any given residential rental premises constructed before 1978, it must cover liability from injury from lead in dwelling units, if that injury arises from any part of the premises that complies with the Lead Law. However, under such insurance, injuries from lead in dwelling units are not covered if they result from an insured owner's gross or willful negligence.

An insurer in the regular market may exclude coverage of liability for injury from lead in a residential rental dwelling unit if the unit (and associated common area) is not in compliance with the Lead Law. However, if such an insurer intends to apply an exclusion of this kind, it must, at the same time, offer the insured the option of "buying back" the lead coverage it intends to exclude. (Lead "buyback" coverage costs extra, subject to review by the Division of Insurance.) Also, if a new owner of residential rental property - constructed before 1978 - is insured for liability by a regular market carrier, he or she generally will be insured for liability for injury from lead in dwelling units occurring within the 90-day period that he or she comes into compliance with the Lead Law.

The above-noted lead liability insurance rules apply to all policies containing liability insurance that are written on residential rental properties by regular market insurers. The rules also apply to homeowners insurance from the FAIR Plan. The FAIR Plan offers homeowners insurance to property owners unable to find coverage in the regular market. It does not provide commercial liability coverage.

The above-noted rules also apply to rental properties, including those that are owner-occupied. The rules do not permit regular market and FAIR-Plan homeowner's insurance policies on single-family owner-occupied homes to contain lead liability exclusions. A regular market or FAIR Plan homeowners insurance on a single family owner occupied home will cover lead liability claims. However, that policy will not cover claims by persons, including children, who are insured under the same policy for liability claims made against them. Note: Surplus lines carriers (less regulated insurers that are not part of the regular market, and that provide insurance to those who cannot find it elsewhere, generally at higher than regular market prices) are not subject to any of the above requirements regarding lead liability insurance.

## **2. What is lead poisoning?**

Lead poisoning is an environmental health hazard especially dangerous for children under six years old. It is caused by ingestion or inhalation of lead. In young children, too much lead in the body can cause serious damage to the brain, kidneys, nervous system and red blood cell. High levels of lead can cause retardation, convulsions, coma and sometimes death. Even low levels of lead can slow a child's development and cause learning and behavioral problems.

## **3. How do children become lead poisoned?**

Children most often are exposed to lead through ingestion of lead paint dust and lead paint debris. Such dust and debris may accumulate in window wells, window sills, floors and other surfaces through normal use and wear of lead-painted building components. Chipping or peeling leaded paint, plaster or putty also creates lead dust and debris. Children do not have to chew on lead painted surfaces to become poisoned; In fact, research has shown that the normal hand-to-mouth activity of young children, bringing a small amount of fine lead dust into the child's system is responsible for most lead poisoning. Children can also be exposed to lead from other sources, such as leaded soil or water, but these rarely cause lead poisoning by themselves.

## **4. Do I face serious liability if a child becomes poisoned on my property?**

Yes. With respect to damages resulting to a lead poisoned child, a property owner is strictly liable under the Lead Law for his or her failure to comply with the Lead Law. This means that the property owner does not even have to be aware of the presence of lead paint in his or her property. The potential damages that may be awarded in such cases may depend on the degree of lead poisoning. Court awards can be considerable for severely poisoned children, as they often include the costs of lost potential earnings, long-term remedial education and medical care for what can be permanent injuries. A property owner who meets the requirements of the Lead Law is free of strict liability as long as he or she maintains a valid Letter of Compliance or Letter of Interim Control. However, such a property owner must exercise reasonable care to maintain the condition of compliance. He or she can become liable to a lead-poisoned child if he or she breaches that duty of reasonable care - that is, is negligent.

## **5. What does the Lead Law require property owners to do?**

Owners of residential property built before 1978 in which children under six years of age live must have the property inspected for lead paint by a licensed lead inspector or risk assessor. If there are Lead Law violations, the property owner must have the unit delead for full compliance, or brought under interim control.

**6. Can I refuse to rent to a family with a child under six as a way of avoiding my obligation to delead?**

No. The Lead Law ([M.G.L. c.111, s. 199A](#)) prohibits rental discrimination, including refusing to rent to families with children under six, or evicting or refusing to renew the lease of families with children under six, because of lead paint. Discrimination is also a violation of the U.S. Fair Housing Act, 42 U.S.C. 3604, and the Massachusetts anti-discrimination statute, [M.G.L. c. 151 B, s. 4](#). Parents cannot waive the rights of their children to live in lead-safe housing or agree to assume the risks of lead exposure.

**7. How do I obtain evidence that the property is in compliance with the Lead Law?**

You need either a Letter of Full Compliance or a Letter of Interim Control. A Letter of Full Compliance is a legal letter, signed and dated by a licensed lead inspector that says either that there are no lead paint hazards in the property, or that the property has been delead. A letter of Interim Control is a legal letter; signed and dated by a licensed risk assessor that says work necessary to make a home temporarily safe from lead hazards has been done. A letter of Interim Control is good for one year, but can be renewed for one more year.

**8. How do I get a lead inspection or risk assessment?**

Call the state Department of Public Health Childhood Lead Poisoning Prevention Program (CLPPP) at 1-800-532-9571 for a list of licensed private lead Inspectors and risk assessors. These lists may also be found at [www.mass.gov/dph/clppp](http://www.mass.gov/dph/clppp). Many of these contractors advertise in the telephone yellow pages as well.

**9. How can I get my property delead or brought under interim control?**

Based on the findings of a lead inspection or risk assessment, a deleader licensed by the state Department of Labor's Division of Occupational Safety must do any high-risk removal of lead paint. Moderate-risk lead abatement such as removal and replacement of leaded components and surfaces (such as windows and woodwork), and making small amounts of leaded surfaces intact may be performed by owners who are authorized by CLPPP. The property owner who is not a licensed deleader can do certain low-risk deleading and interim control tasks. For a list of licensed deleaders, call CLPPP at 1-800-532-9571. For information on moderate or low-risk owner/agent deleading and interim control work, call CLPPP or visit [www.mass.gov/dph/clppp](http://www.mass.gov/dph/clppp).

**10. Is there financial assistance to help owners pay for deleading?**

Yes. First, there is a state income tax credit of up to \$1,500 per unit for deleading full compliance. A state income tax credit of up to \$500 per unit is applicable for half the cost of interim control work that also contributes to full compliance. Second, there are grants and no interest or low-interest loans available to eligible property owners through the U.S. Department Housing and Urban Development, the Massachusetts Department of Housing and Community Development, MassHousing, local city and town community development, rehabilitation and planning departments, as well as private banks. Call CLPPP for more detailed information on finding financial assistance.

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WHERE TO GET INFORMATION

Massachusetts Department of Public Health  
Childhood Lead Poisoning Prevention Program  
250 Washington Street, 7th Floor  
Boston, MA 02108-4619  
1-800-532-9571

Massachusetts Division of Insurance  
One South Station  
Boston, MA 02110-2208  
617-521-7794