

RE20R20: Lead Paint – Residential Sales and Rentals

(Revised as of 2020)

1. Dangers of Lead (10 minutes)

- a. 1600's – 1978 – lead was added to paint, varnish, stains, pipes and floor tiles
 - i. Lead was added to paint to speed drying, improve durability and to resist moisture
- b. Lead poisoning is a serious disease
 - i. Lead is a toxic metal and is harmful to both adults and children
 - ii. Most dangerous for children under age 6
 - iii. Affects nervous system, kidneys and brain in children, slowing a child's development and causing learning and behavior disorders
 - iv. Lead is a danger when ingested and inhaled
 - v. Sources of lead – older homes and buildings, soil, yards and playgrounds, dust, consumer products and drinking water
- c. Lead poisoning detection
 - i. Systems are similar to other illnesses and usually include hyperactivity, poor appetite, weight loss, fatigue and insomnia
 - ii. Blood testing is mandatory for children under age 6
- d. Lead poisoning treatment
 - i. Early intervention and elimination of the source of lead
 - ii. Medicine (Chelation)

2. History of the Lead Law (20 minutes)

- a. Lead Poisoning Prevention Act – 1971 – 1st state statute to prevent lead poisoning
 - i. Provided enforcement by creating the Childhood Lead Poisoning Prevention Program (CLPPP) with the Department of Public Health and local boards of health
- b. 1971 – Congress enacted Lead-Based Paint Prevention Act – banned the manufacture of paint containing more than a certain percentage of lead by weight for use on interior or exterior residential surfaces
- c. 1978 – US Consumer Product Safety Commission (CPSC) banned lead paint in residential buildings and public buildings that have greater than or equal to 0.06% or 600ppm lead “to reduce the risk of lead poisoning in children who may ingest paint chips or peelings”
- d. MA law amended: 1978, 1987, 1993 and 2017
- e. Federal law amended: 1992 and 1994
- f. 2010 – EPA enacted Renovation, Repair and Painting Program (RRP) – protects the public from lead-based paint hazards associated with renovation, repair and painting activities
 - i. Workers are required to be certified and trained in the use of lead-safe work practices and firms must be EPA-certified

- g. MA law change – December 2017
 - i. Lead threshold in child's blood has been lowered from 25 µg/dL to 10 µg/dL
 - ii. Changes to Accessible/Mouthable (A/M) surfaces
 - iii. New hazard identified as a Friction Hazard
 - iv. The law substantially reduces deleading costs but brings a greater need to maintain homes as the changes allow more surfaces in the home to have intact lead paint
 - v. Moveable/Impacted surfaces (M/I) not affected by these changes
3. The Lead Law (45 minutes)
- a. The lead law is both a federal and state law
 - i. The state law requires affirmative duties on the part of the owners to delead or make their properties "lead safe" rather than just notification
 - b. Seller may not discriminate:
 - i. If a potential buyer has children under 6
 - ii. If they have been asked about lead at the property
 - iii. If a lead contingency is presented with an offer
 - c. Buyer has the right to inspect for the presence of lead
 - i. 10-day window to inspect or as determined by contract
 - ii. Buyer may waive inspection and accept risks
 - d. Disclosure required for homes built before 1978
 - i. 10 pages of DPH's Childhood Lead Poisoning Prevention Program (CLPPP) package is required to be provided
 - ii. Property Transfer Notification Certification – required to be completed by the seller, buyer and agents before obligated under contract to purchase
 - e. Lead Testing
 - i. Lead determination versus lead inspection
 - ii. Types of tests – chemical, x-ray and laboratory
 - f. Repairs
 - i. Interim Controls – temporary measures to correct urgent lead concerns
 - ii. High-risk deleading – completed by licensed deleaders
 - iii. Low and moderate-risk deleading – may be completed by a homeowner or their agent
 - g. Compliance with Lead Law
 - i. MA Lead Safe Database
 - ii. Letter of Compliance – legal letter that states there are no lead paint hazards or the home has been deleaded
 - iii. Letter of Interim Controls – legal letter that work necessary to make the property safe from lead hazards has been done
 - iv. Letter of Interim Controls is valid for 1 year but can be renewed for a second year if all conditions are being met
4. Residential Rentals (25 minutes)
- a. Landlord may not:

- i. Refuse to rent because of lead at the property
 - ii. Charge a tenant for the cost of deleading
 - iii. Enter into a contract limiting liability
 - b. Landlord may be held strictly liable regardless of knowledge of lead paint
 - c. Tenants have the right to ask for an inspection
 - d. Disclosure required for units built before 1978
 - i. Tenant Lead Law Notification Form – given before signing a lease
 - ii. Tenant Certification Form – signed by landlord, tenant and agents
 - e. New owners of a rental property have 90 days after taking title to bring into compliance
 - f. Landlord may delay tenancy up to 30 days to ensure Letter of Compliance or Letter of Interim Controls
 - i. Prior to signing a lease, the tenant is responsible for living expenses
 - ii. After signing a lease, the landlord must provide temporary housing
 - g. Landlord may be sued by parents acting on behalf of a child with lead paint poisoning
 - h. Landlord may not file a cross-complaint or countersuit against parents for negligence
 - i. Landlord must defend the first suit brought by the parents, then may sue the parents in a separate action within 1 year of the judgment
- 5. Exemptions from Lead Law (5 minutes)
 - a. Vacation rentals – less than 31 days
 - b. Rooming houses – less than 250 square feet
- 6. Penalties for Non-Compliance (10 minutes)
 - a. Seller, landlords and real estate agents
 - b. Civil penalties – up to \$1,000 under state law
 - c. Civil penalties – up to \$10,000 under federal law for each violation, plus possible criminal sanctions
 - d. Under MA law, real estate agents, property managers and certain landlords and sellers, where applicable, may be subject to double to treble damages and attorney fees under the 93A – Consumer Protection Act
 - e. Any person who knowingly violates the Lead Paint Law shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred under federal law
 - f. A court may award court costs to the party commencing such action, together with reasonable attorney fees and expert witness fees, if that party prevails
- 7. Taxes and Funding (5 minutes)
 - a. MA Deleading Tax Credit
 - b. Statewide programs
 - c. Local programs by cities/towns
 - d. Local banks
 - e. HUD 203K program

References:

42 U.S. Code Chapter 63A
M.G.L. Chapter 111 Sections 189A – 199B
105 CMR 460
MA Department of Public Health
MA Lead Safe Database
Piers v. Wheeler and Taylor, Inc. 8 Mass. Reporter 410 (1998)

Suggested Handouts:

Childhood Lead Paint Prevention Program
Property Transfer Notification Certification
Tenant Lead Law Notification
Tenant Certification Form