

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



State and Local Lead Hazard Disclosure Laws

The federal Lead Hazard Disclosure Law requires property owners to disclose the presence of lead-based paint and/or lead paint hazards to buyers and tenants. HUD and EPA are charged with enforcing this law, but the agencies lack the staff and resources to pursue every violator and although state and local governments may have the resources, they lack the power to enforce federal law.

To address this disparity, state and local governments can adopt their own disclosure laws, which would allow them to pursue disclosure enforcement without relying on federal intervention. Creating state or local disclosure requirements that complement federal law can strengthen compliance and local enforcement, as well as provide supplemental funding for state and local programs through penalties. Moreover, state and local disclosure laws can close federal loopholes, such as the zero bedroom exemption, and offer additional protective provisions, such as allowing non-profit organizations to bring suit on behalf of an aggrieved individual.

Existing state and local disclosure laws are summarized below. Many of these innovative ideas are featured in the Model Law, also included in this Tool Kit.

State Disclosure Laws

Illinois (410 ILCS 45/9.1) The Illinois law provides the following:

- **Owners do not have to disclose mitigation notices for properties at which they have obtained certificates of compliance.** Owners who have received a mitigation notice must provide prospective tenants with written notice that a lead hazard has previously been identified in the dwelling unit, unless the owner has obtained a certificate of compliance for that unit.
- **Informational brochure developed by the Department.** All owners of properties built before 1978 must give prospective tenants information on lead hazards by providing a copy of an informational brochure prepared by the Department.

Massachusetts (M.G.L.A. Ch 111, § 197A) The Massachusetts law served as a model for the federal Disclosure Law.

The law provides the following additional requirements for property sales:

- **Additional information for purchasers of rental properties.** The Director of Health must prepare a standard notification form for prospective purchasers. Prospective purchasers of rental properties must be given a separate notification form which outlines issues specific to rental properties (e.g. information about liability insurance and discrimination).
- **Lead poisoning information.** Information about any past or present reported cases of lead poisoning in occupants must be given to any prospective purchasers without

disclosure of the individual's name. The federal Disclosure Law only requires that landlords disclose any lead-hazard evaluation reports.

- **Verbal notice.** Real estate agents must verbally inform prospective purchasers of the possible presence of dangerous levels of lead and the provisions of the lead law in addition to providing the purchaser with written information.
- **Rental contracts with an option to buy.** These types of contracts are covered by the same laws as contracts for sale.

The law requires the following additional provisions for rental housing:

- **Size exemption.** An owner is exempt if the residential dwelling has fewer than 250 sq. feet of floor space or is used as a rooming house, so long as no child under age six occupies the unit.
- **Enforcement.** Failure to comply makes an owner liable for damages and subjects the owner to a penalty not to exceed \$1000. A violation is considered an unfair and deceptive act or practice under the state's consumer protection law. Compliance with the disclosure law does not bar any claim for liability, nor is disbursement by an owner of a notification brochure seen as an admission of liability.

Rhode Island (Gen. Laws § 23-24.6-16) (*Effective until 7/1/07*) Rhode Island law incorporates the requirements of the federal Disclosure Law and provides the following additional requirements:

- **Materials in addition to the EPA educational pamphlet.** Sellers and landlords must provide educational materials developed by the Department of Health (including information about disclosure *and* information about financial assistance for lead inspections and lead hazard reduction) along with the EPA pamphlet.
- **Compliance with disclosure requirements is not a defense.** Compliance with disclosure requirements does not bar relief and may not be used as an affirmative defense by sellers or landlords.
- **Real estate registry.** The Department of Health must establish a registry of properties at which a comprehensive environmental lead inspection has been performed.
- **Inspection reports.** The seller or landlord must provide the purchaser or tenant with any available records or reports pertaining to lead hazards in the property being sold or leased.
- **Exemptions.** The regulations exempt sales and leases of residential dwelling units determined to be lead-free, provided that in sales transactions a copy of the lead-free certificate is provided to the buyer.
- **Enforcement.** Violators are subject to a civil penalty of not less than \$100 and not more than \$500 for each violation.

Local Disclosure Laws

Cleveland, OH (Codified Ordinances of Cleveland, Ohio § 240.06) The Cleveland ordinance incorporates the federal Disclosure rule by reference. Some additional provisions include:

- **Lead-safe maintenance or lead-free certificates.** The seller or lessor shall disclose to the purchaser or tenant, both orally and in writing in the rental agreement whether the property owner has a current lead-safe maintenance or lead-free certificate and the length of time of its coverage.
- **Discovery of lead hazard prior to expiration of a lease.** If the owner of a residential unit learns of the presence of lead paint prior to the expiration of a lease, the owner shall notify each tenant of the presence of lead paint within 10 days of discovering its presence, and provide each tenant with a Lead Warning Statement and the lead hazard information pamphlet.
- **Penalties.**
 - **Criminal.** Any person who knowingly fails to comply with this disclosure law is guilty of a misdemeanor of the first degree and subject to fines of not more than five thousand dollars (\$5000)
 - **Injunctive.** The Director of Public Health or Commissioner is authorized to take such lawful action as may be necessary to enforce this section or to enjoin any violation of it.
 - **Civil liability.** Any person who knowingly violates any provision of this section will be jointly and severally liable to the purchaser or lessee in an amount equal to three times the amount of damages incurred by such individual.
 - **Attorney fees, expert witness fees, and court costs.** In any action brought for damages under this section, the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.
- **Non-profit organizations may bring action.** A non-profit environmental health or housing rights organization is authorized to bring a civil action on behalf of an aggrieved individual or individual(s) for violations of this disclosure law. The non-profit organization may recover its costs if it demonstrates that it has exerted organizational resources, including staff time, to investigate the alleged non-compliance.

Paterson, NJ (Paterson Code, § 351-3-9) The requirements of the Paterson ordinance differ significantly from the federal Disclosure Law. This law gives the Division of Health responsibility for inspecting a dwelling prior to each change in occupancy. The Division of Health also must inform the owner and any prospective purchaser or lessee if the inspection reveals lead-based paint.

- **Inspections prior to any change in occupancy.** The Paterson Code requires the owner of every dwelling to obtain a certificate of inspection from the Division of Health immediately prior to allowing a new tenant or owner to occupy or possess the property. This is true regardless of whether the premises were previously inspected and a certificate of inspection issued.

- **Certificate of Inspection.** The certificate of inspection is issued upon physical inspection of the premises by the Division of Health.
- **Broad inspection powers.** The inspectors must inspect the common areas of the building and may inspect any other rental or dwelling unit in the same building.
- **Owner pays costs of inspections.** The owner must pay the cost of the inspections. In the event that lead-based paint is present, all other dwelling units on the premises must be inspected and paid for by the owner.
- **Notification upon finding lead-based paint.** If an inspection reveals lead-based paint, the Division must notify the property owner and the purchaser or proposed occupants.
- **Enforcement.** Violators are punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 90 days.

Philadelphia, PA (Philadelphia Code § 6-803) The Philadelphia disclosure ordinance is very similar to the federal Disclosure Law. Some of the additional provisions are as follows:

- **Multi-lingual information.** Seller/landlord must either provide an inspection or risk assessment report on a multi-lingual form drafted by the Philadelphia Department of Public Health. The multi-lingual form must be provided in addition to a lead hazard information pamphlet.
- **Five days to terminate a sales contract if inspection reveals lead-based paint.** Every contract for sale shall provide that the buyer has 10 days to get a lead inspection and 5 days after receipt of the inspection report to terminate the contract if the report reveals lead-based paint.
- **Tenant right to inspect.** Tenants are given 10 days to inspect the property for lead-based paint and 2 days to terminate the lease if the inspection reveals lead-based paint.
- **Right of inspection upon renewal of lease.** Upon renewal of an existing lease, any lessee shall have the right to get an inspection or risk assessment. The tenant is allowed a 10-day period to notify the lessor in writing if the tenant decides to terminate the lease, with actual termination to occur not more than 90 days after the receipt of the inspection report.
- **Enforcement by aggrieved buyers and tenants.** Remedies for a buyer and tenants include damages equal to double the cost of an inspection, plus attorney's fees and costs. An aggrieved party also may seek injunctive relief.
- **Notice and opportunity to disclose.** Tenants must give notice and opportunity to provide disclosure prior to bringing a court action. Any tenant who has not received disclosure shall first notify the landlord in writing and the landlord shall have 10 days to remedy the non-compliance.
- **Penalties for non-compliance.** A violator may be subject to a fine of no more than \$300 and/or imprisonment of up to 90 days for each offense. Each day of non-compliance is a separate offense.