

# ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



## GUIDE TO IDENTIFYING AND DOCUMENTING DISCLOSURE LAW VIOLATIONS

The Disclosure Law compels property owners to provide lead hazard information to buyers and tenants upon a sale or lease of housing. HUD and EPA share responsibility for enforcing the law.<sup>1</sup> Typically, HUD and EPA have focused their enforcement resources on property owners and agents with fairly substantial holdings and/or on owners of properties with code violations or occupied by a child with an elevated blood level (EBL).

Advocates and health departments can play a significant role in federal enforcement by referring disclosure violations to HUD. Advocates and health departments often know which properties are poisoning children and who owns them, so they can assist federal authorities in effectively targeting enforcement efforts. During routine interactions with tenants, local advocates and health departments can identify problem landlords who may be violating the law and collect documentation. For example, tenant advocates can request a copy of their client's lease in order to identify potential disclosure violations. Tenant interview forms also can be used to identify and document violations (see the model interview form included in this Tool Kit).

Ideally, violations of the disclosure rule should be well-documented. While advocates need not develop proof of violations sufficient to withstand scrutiny in court, providing HUD with compelling information will help to ensure that the agency pursues an enforcement action. Assembling reliable documentation also may help to reduce the time necessary for HUD to investigate and develop a case.

### **Types of Information Needed to Identify and Document Disclosure Law Violations**

A range of information is necessary to document violations of the Disclosure Law. Some information is essential to establishing a violation, such as housing type and age, and the failure to provide disclosure. Other information is helpful in targeting investigations and identifying cases for priority consideration, such as housing condition and size of the landlord's portfolio.

Because this paper focuses on violations occurring at rental properties, it is important to understand what triggers a landlord's obligation to disclose. In addition to providing disclosure before a tenant becomes obligated under a written or oral lease landlords must disclose any new information that has become available upon renewal of an existing lease. A

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<sup>1</sup> For purposes of this project, HUD has requested that all tips be referred to it. However, health departments and local advocates should use their best judgment in determining where to send referrals. For example, if you have an existing relationship with an EPA regional office, it may make more sense to work with those contacts.

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change of terms, such as a rent increase, is considered a lease renewal. Leases of 100 days or less are not covered by the rule.

In selecting cases for referral to HUD, several factors merit consideration. Larger property owners are a priority because more units can be addressed through a single settlement. Other important factors include: owners of properties with extensive code violations or multiple EBL cases; owners who fail to disclose known lead hazards; large-scale owners who have failed to comply with disclosure requirements in numerous properties; and owners who have intentionally concealed information or tried to hide their lack of compliance. These cases are likely to involve problem properties and also to result in higher settlements.

This paper provides tips on how to identify and document potential disclosure violations in rental properties for referral to HUD. The paper is organized according to the types of information that provide the basis for establishing a violation or targeting enforcement: property-related information; information on the landlord; and evidence of non-compliance. Other documents in this Tool Kit may be helpful in gathering information, including a tenant interview form and tenant affidavits in English and Spanish.

### **Property-Related Information**

1. Housing Type and Age: Since the disclosure law applies only to pre-1978 properties, establishing the age of the property is essential to proving a violation has occurred. Properties built before 1950 tend to have more lead-based paint and more serious lead hazards. The type of housing also is important: zero bedroom dwellings are exempt; housing for the elderly and disabled also is exempt unless a child under age 6 resides or is expected to reside there.

How to locate information on housing type and age:

- The **local property tax assessor's office** (sometimes called the auditor) has address-based information on housing type and age, which may be available electronically through the agency's or county's website. If not available electronically, the assessor's office could be contacted directly to determine the most efficient way to access this information.

- **Census data** includes information on housing age, which could be used to determine the approximate age of housing in the area in which a property is located. Census data is available online at <http://www.census.gov/main/www/cen2000.html>.

- **Online real estate databases**: [www.realtors.com](http://www.realtors.com) lists rental properties and is searchable by zip code and address. The information on specific properties includes date of construction and management company.

- When talking with **tenants**, advocates and health departments should inquire as to what type of housing they are living in to rule out the possibility that they are living in zero

bedroom, elderly, or disabled housing. Tenants also may know when a building was constructed.

When referring cases to HUD, it is helpful to provide information regarding the age and type of the building, such as a printout or copy of tax records or information gathered during a tenant interview.

2. Housing Condition: Targeting enforcement efforts to poorly maintained housing with existing lead hazards maximizes the potential for improving the housing stock and protecting children. A number of factors indicate that housing may be poorly maintained:

- **Housing code violations**: Outstanding housing code violations often signal that a property is not maintained adequately and therefore is at enhanced risk for lead-based paint hazards. In most jurisdictions, chipping and peeling paint is a violation; a citation for deteriorating paint in older buildings is likely to indicate the presence of lead hazards. A few jurisdictions prohibit lead hazards under the housing code, so code violation data may include specific information on lead hazards.

In some jurisdictions, code violation data may be accessed electronically through the local housing code enforcement agency website. Non-governmental organizations in some areas have compiled information on housing code violations and posted it electronically (see, for example, Neighborhood Knowledge Los Angeles, <http://nkla.sppsr.ucla.edu/index.cfm>). If not available electronically, the code enforcement agency should be contacted directly to determine the most efficient way to access this information.

Because evidence of housing code violations is not *essential* to proving a disclosure law violation, printouts or copies of information obtained via the web or directly from the code enforcement agency are likely to be sufficient to demonstrate to HUD that a property deserves priority attention. If the code violation relates directly to lead-based paint, a copy of the notice of violation also could be used to show that the landlord had knowledge of lead hazards at the property, which must be disclosed to subsequent tenants, or upon lease renewal if the information has become available since the initial disclosure.

- **Lead poisoned child**: The presence of a lead-poisoned child in a home is a strong indicator that the home contains lead hazards (although of course, the poisoning could be caused by lead hazards outside the home). Therefore, learning the addresses of lead-poisoned children or the identity of the owners of their buildings can help target problem properties or landlords. In addition, HUD has focused on properties where children have been poisoned, because higher penalties typically have been imposed in cases where significant damage can be attributed to disclosure law violations.

Many health departments will not release EBL-related data out of concerns for patient privacy. Two possible options for getting around this obstacle are:

- Request the names of owners of multi-family buildings at which a child has been poisoned. This reduces the probability of any potential breach of privacy, and facilitates the identification of problem property owners.
- Request addresses where lead hazards have been identified.

In addition, advocates working with tenants can inquire whether their client's children have had elevated blood lead levels.

Of course, obtaining the results from lead hazard inspections is doubly useful. In addition to definitively identifying housing with lead hazards, property owners typically are notified when an inspection reveals that their property contains lead hazards. In that case, the owner must disclose the presence of hazards as well as the inspection report upon lease renewal, tenant turnover, or sale.

Advocates who have obtained address-based EBL data can provide this information to HUD because they are not subject to HIPAA's privacy protection requirements (although patient privacy should be respected). Health departments, which may be subject to HIPAA, should develop mechanisms for making information available in ways that do not violate HIPAA's privacy protections. In all cases, advocates and health departments can transmit information provided to them by tenants, with the tenant's permission.

- **Back taxes:** Financial difficulties at a property often are a harbinger of physical decay. Thus, the fact that an owner is delinquent in property taxes or utility bills may indicate that the owner's properties are or may become distressed. In some jurisdictions, information on tax delinquent property owners may be accessed electronically through the local tax agency website. Non-governmental organizations in some areas have compiled information on property tax delinquency and posted it electronically (see, for example [www.hallwatch.org](http://www.hallwatch.org), based in Philadelphia). If the information is not available electronically, the tax agency could be contacted directly to determine the most efficient way to access this information.

- **Visual evidence:** In some cases, a visual survey, even of the exterior, can identify obvious signs of deferred maintenance. It may be helpful to provide photographs of the property(ies) where violations have occurred to HUD. These photos will provide visual evidence of hazardous conditions, and may help get HUD's attention.

- **Environmental Sampling:** Hazards also can be identified through environmental sampling, such as through CEHRC projects.

### **Information about the Landlord**

1. Identifying Landlords and Agents: Both owners and their agents can be held accountable under the Disclosure Law. Names and addresses of rental property owners typically are available through the local property tax assessor's office. In some cases, it may be necessary to visit the tax office and conduct a manual search. Some offices may be able to provide information upon request, and others may make information available electronically.

Some landlords attempt to conceal their ownership of a property in an effort to avoid liability stemming from the property. Owners may hold properties in different corporate names to make it difficult to determine the full extent of their real estate holdings. If corporate names are used, the state agency that registers corporations (usually the secretary of state) may be able to provide information indicating the individuals who formed the corporation. Some jurisdictions have rental licensing or registration requirements that require corporate owners and partnerships to identify accountable individuals. If those records are publicly available, they also may provide useful information for identifying landlords and possibly agents. In some cases, it may be useful to do a title search.

Where agents are involved in managing rental housing, tenants likely are in the best position to identify them. The agent may be a signatory to the lease, and likely collects the rent. While this source is by no means comprehensive, [www.realtors.com](http://www.realtors.com), a real estate database, provides the managing agent for rental properties in a nationwide database that can be searched by address.

2. Demonstrating that the landlord/agent has significant holdings: While establishing that a landlord has significant holdings is not essential, it can serve to increase HUD's interest in a case. In many cases, advocates and health departments know who the problem landlords are, and institutional or anecdotal evidence may be sufficient to convince HUD that a particular landlord merits priority attention.

The real estate website [www.realtors.com](http://www.realtors.com) provides information on rental properties, searchable by address or zip code. Once a specific property is selected, the site offers links from the management company for that property to additional properties in the area managed and/or owned by that company.

Owner-identifying information obtained through tax records, housing code enforcement data, or other sources, should be provided to federal officials. Once HUD undertakes an enforcement action, they can require property owners to disclose all their holdings.

### **Evidence of Non-Compliance**

1. Compliance with Disclosure Requirements: Determining whether a property owner complied with disclosure requirements is likely going to require working directly with tenants. Tenants can be asked whether they received information required by disclosure when they signed or renewed their lease. If they did not receive the information, the owner may have failed to comply with disclosure requirements (it is also possible that the tenant does not recall receiving the information, despite a landlord's compliance with the law).

Reviewing a tenant's lease, including any attachments, is the most reliable way to determine whether disclosure has occurred. The lead hazard warning statement should be included as part of the lease, as well as a statement disclosing any known hazards, a listing of lead hazard reports provided to the tenant, and the tenant's signature indicating receipt of disclosure.

Even if a property owner appears to have complied with disclosure, he could have inappropriately stated that there are no known hazards on the acknowledgment form. If possible, collect documentation proving that lead hazards have been identified, such as through a health department EBL investigation, and that the property owner received the information.

Owners are required to keep disclosure documents for three years from the date of the lease. However, requesting records from owners will not make sense in most cases. Owners are under no obligation to provide these records, and presumably would have no incentive to do so. HUD is in the best position to obtain information regarding compliance directly from property owners using its enforcement powers under the law.

2. Evidence that the Owner *Knowingly* Violated the Law: Any evidence that a property owner knowingly violated the disclosure law may be helpful to HUD in settling cases. If the landlord has been provided with information on the disclosure law (e.g., as part of an effort to educate landlords on the law), this information should be passed along to HUD along with any proof that the landlord received the information.

## **Tools for Collecting Information and Documenting Disclosure Law Violations**

### **Documentation Provided by Tenants**

In order to maximize the opportunities for uncovering violations of the Disclosure Law, advocates and health departments should systematically gather relevant information from tenants, including copies of leases. Forms can be developed and used during tenant interviews in order to ensure that the information necessary to provide the basis for a violation is routinely collected. Tenant affidavits also can be used to document violations. The Tool Kit contains a model tenant interview form, and model tenant affidavits in English and Spanish.

### **State and Local Agencies**

A wealth of information is available on local agency websites, so it makes sense to conduct a thorough search to determine what information is available electronically for your jurisdiction. Where information is not available online, contact local agencies directly to determine the most efficient means for obtaining information. In cases where the agency refuses to provide information that should be publicly available, a freedom of information request can be submitted.

### **Freedom of Information Requests**

State freedom of information laws provide for access to state and local governmental information. Many laws now enable citizens to request and/or receive information electronically. Freedom of information requests may be used to formally request information from state and local agencies, including housing and health departments. In some cases, it may be necessary to bring suit to gain access to information. For example, in a case decided

in 2001, a court ordered the New York City Department of Health to create a computer program to enable it to remove confidential information from its lead poisoning screening records so those records could be produced in electronic format with the confidential information deleted. See [http://www.nyssba.org/adnews/leg\\_agenda/leg\\_ag082701\\_4.htm](http://www.nyssba.org/adnews/leg_agenda/leg_ag082701_4.htm) for a more detailed description of the case. Courts in other jurisdictions, including Florida, Illinois, Kansas, and Tennessee have reached similar decisions when faced with analogous issues.

For a wealth of information on federal and state freedom of information laws, including sample FOIA requests, see the Freedom of Information Center website, at <http://www.missouri.edu/~foiwww/>.