

# Children: A Protected Class But Also At Greatest Risk for Lead Poisoning

## CHILDREN: A PROTECTED CLASS BUT ALSO AT GREATEST RISK FOR LEAD POISONING

What Can You Do?

What Can't You Do?

How Do You Comply with All the Laws?

**By Jo Becker, Education/Outreach Specialist, Fair Housing Council of Oregon**

While anyone can be poisoned by lead, children under the age of six are particularly vulnerable. Children are at risk both because they are more likely to ingest lead in housing situations and because lead can adversely affect children's brains, central nervous system, and other organs and systems that are still developing. The Consumer Product Safety Commission reports that 1 out of every 25 children has unsafe levels of lead in their blood. According to the Agency for Toxic Substances and Disease Registry the number is much higher—roughly 1 in every 6!

Studies have shown that inhalation of lead dust particles in the air due to friction caused by opening and closing lead-based painted surfaces such as doors and windows can be just as hazardous as the ingestion of lead paint particles. Once poisoned, most of the resulting health effects are not curable. To make the situation all the more insidious and difficult, you may unknowingly have lead in your building because it cannot be seen, tasted, or smelled.

Some sources state that lead-based paint hazards found in the home are, in fact, the single largest environmental hazards

facing our nation's children. The magnitude of the problem and the importance of the issue have raised questions concerning lead-based paint and the requirements of the Fair Housing Act[1] to not discriminate against families with children.

It is illegal under the federal Fair Housing Act (FHA) to deny housing to families with children (or otherwise treat them differently in any way) unless the housing provider is exempt as a "designated senior community" (for information on familial status protections and the housing for older persons exception visit [www.FHCO.org/families.htm](http://www.FHCO.org/families.htm)). Case law has reinforced the fact that housing providers cannot discourage potential residents with children simply because the property has or may have "hazards" such as steep stairways and balconies, busy streets, and the presence of dangerous equipment or lead-based paint. It is up to the household to determine if a given property is appropriate for their children; it is not up to a housing provider to determine this for them.

Housing providers with units built prior to 1978 must advise all potential residents (with or without children) that the unit may contain lead-based paint (see section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992), but may not refuse housing (or treat a household differently) based on the presence of children.

Below is an excerpt from a 1997 memo from HUD's Fair Housing and Equal Opportunity department clarifying the interaction between federal lead-based requirements and the FHA.

**Question: May a housing provider affirmatively market units where lead-based paint hazards have been controlled to families with children?**

**Answer:** Yes. Affirmatively marketing units where lead-based paint hazards have been controlled to families with

children is consistent with fair housing laws and with the need to protect the public welfare. A housing provider may verbally or through advertisements advise the public or potential applicants for housing that such units are available, or that families with children are welcomed for such units. In addition, a housing provider may recommend a unit where lead-based paint hazards have been controlled to families with children under the age of six, or inform the family of the availability of a waiting list for units where lead-based paint hazards have been controlled.

**Question: May a housing provider exclude families with children from units where lead-based paint hazards have not been controlled?**

Answer: If a unit which has not undergone lead hazard control treatments is available and the family chooses to live in the unit, the housing provider must advise the family of the condition of the unit<sup>1</sup>, but may not decline to allow the family to occupy the unit because the family has children. Similarly, it would violate the Fair Housing Act for a housing provider to seek to terminate the tenancy of a family residing in a unit where lead-based paint hazards have not been controlled against the family's wishes because of the presence of minor children in the household. The housing provider may offer transfers, with or without incentives, to a family residing in a unit where lead-based paint hazards have not been controlled to enable the family to move to a unit where lead-based paint hazards have been controlled, including for the purpose of addressing hazards in the family's current unit.

**Question: If resources allow lead-based paint hazards in only a few units to be controlled at a time, may these units be reserved for families with young children?**

Answer: Housing providers may hold open vacant units where lead-based paint hazards have been controlled for families with young children and may offer such families a preference. However, as noted above, if units where lead-based paint hazards have not been controlled are available, a housing provider cannot refuse to allow a family with young children to live in such units. A housing provider must provide a family with young children information about the hazards of lead poisoning. If only a few units where lead-based paint hazards have been controlled are available at any given time, we recommend that such units be scattered throughout a site rather than segregated in one area.

**Question: May housing providers give priority to addressing lead-based paint hazards in units occupied by families with small children?**

Answer: Yes. As noted above, however, families cannot be required to vacate units in order to address lead-based paint hazards. (Families can of course be required to temporarily relocate to another dwelling unit so that the lead hazard control work may be done safely.) Nothing in this memo affects the separate obligation of a housing provider to make reasonable accommodations to people with disabilities.

---

<sup>1</sup>Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d).

Whether you are (or represent) a landlord, a seller, or a homeowners association, you need to be familiar with the nexus between lead-paint and FHA requirements. You can learn more about the later at [www.FHCO.org](http://www.FHCO.org) or call our Fair Housing Hotline at 800/424-3247 Ext 2.

You should also know that the federal government requires housing providers to disclose that there may be lead hazards in homes built before 1978 prior to contract and prior to many repairs and renovations. Federal law also requires those doing work on pre-1978 housing be certified to do so and to follow specific work practices. You must, by law, hire a contractor who is lead-safe certified—or become certified yourself—if doing work on a home you do not occupy. To you're your lead questions answered and learn more about these requirements visit [www.FHCO.org/lead.htm](http://www.FHCO.org/lead.htm) or contact the LeadLine at 503/988-4000 (a free service).

You should also check out the Portland-based Community Energy Project's (CEP) "Living Lead Safe" program (503/284-6827). The CEP class would make an excellent office or community meeting presentation or even a wonderful offering an agent could set up for his / her clientele. It takes about an hour and, as a former Realtor® myself, I can tell you it is mind blowing!

---

This article brought to you by the Fair Housing Council; a nonprofit serving the state of Oregon and SW Washington. Learn more and / or sign up for our free, periodic newsletter at [www.FHCO.org](http://www.FHCO.org).

**Qs about your rights and responsibilities under fair housing laws?**

Visit [www.FHCO.org](http://www.FHCO.org) or call 1-800-424-3247 Ext. 2.

**Qs about this article? Want to schedule an in-office fair housing training program or speaker for corporate or association functions?**

Contact Sandy Stienecker, Education / Outreach Specialist at [sstienecker@FHCO.org](mailto:sstienecker@FHCO.org) or 503/23-8197 Ext. 109

---

[1] Federally protected classes under the Fair Housing Act include: race, color, national origin, religion, sex, familial status (children), and disability. Oregon law also protects marital status, source of income, sexual orientation, and domestic violence survivors. Washington law covers marital status, sexual orientation, and domestic violence survivors, and honorably discharged veterans / military status. Additional protected classes have been added in particular geographic areas; visit [FHCO.org/mission.htm](http://FHCO.org/mission.htm) and read the section entitled "View Local Protected Classes" for more information.