

What Landlords Don't Know About Lead

Following is a guest post by Jo Becker, Education/Outreach Specialist for the Fair Housing Council of Oregon.

Lead poisoning is of greatest concern with respect to children. This you *do* know...

We did a very informal survey and found that of the over 500 landlords asked, 73% owned or managed pre-1978 properties (over 9700 individual units, in fact) and almost all (91%) knew that young children are at the greatest risk of lead poisoning. That's good news; this key message from the Dept. of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) has been received.

However, we also found:

- . . . **...that 25% still don't know that HUD and EPA have required lead disclosure in all units built prior to 1978 (including use of a specific brochure on the subject) prior to contract since 1996 (see *boxed insert below*).**
- . . . **... that 41% are still not aware that HUD / EPA have also required disclosure (with use of a different brochure) prior to many repairs or renovations made to pre-78 properties since 2008.**
- . . . **...that 50% didn't know HUD / EPA has required that many repairs or renovations be done by a certified lead-safe contractor since 2010.**
- . . . **... that 37% still don't know it has been illegal under the federal Fair Housing Act [1] to deny housing to an applicant simply because there are children in the household (even in pre-1978 properties) since 1988.**

☒ Suffice it to say the requirements above are real federal regulations housing providers are held liable for knowing and following. And, as recent cases demonstrate, the penalties for non-compliance can be significant.

Learn more about lead disclosure and certification requirements and information about familial status protections go to the FHC0 website.

The survey was informative in a few more ways:

☒ **1.** We found there's confusion surrounding the two different HUD / EPA pamphlets referenced above. About 1/3 knew of those surveyed knew there were two different brochures; about 1/3 did not realize this; about 1/3 were unsure. To further confuse the matter, the newer "Renovate Right" pamphlet has been revised [4]. To help clarify the issue, we have provided images of each here.

2. We learned that over half (52%) didn't know where to find the pamphlets and their accompanying disclosure forms online. To be sure you can access these free resources we have included the URL for each here[5]:

Pre-contract Pamphlet: "Protect Your Family from Lead in Your Home"

Pre-contract Disclosure Form for Rentals

Pre-contract Disclosure Form for Sales

Pre-repair Pamphlet: "Renovate Right"

Note that the original "Renovate Right" brochure shows the outside of a house with a front lawn; the predominant color is green with "March 2008" printed on its green back cover. The revised "Renovate Right" brochure shows an interior shot of a home; the predominant color is pink with "Revised September 2011" printed on its tan back cover.

The Pre-repair Disclosure Form can be found inside the pre-repair pamphlet “Renovate Right.”

3. Based on survey results, it would appear the majority of landlords are outsourcing required repairs and renovations. To help you find local professionals trained to assist you we’ve provided the URL for the EPA’s Certified Renovation Firm search tool:

Find Certified Renovation Firms

In addition, if you’re interested in becoming lead-safe certified yourself, use the EPA’s Accredited Renovation Training Programs search tool to find a class near you.

Find Accredited Renovation Training Programs. You can also call the Lead Line at (503) 988-4000 (a free service).

4. Lastly, our survey told us that over half (64%) didn’t know that a Portland-based nonprofit offers free “living lead safe” workshops, yet 83% indicated they planned to learn more about lead, reduce lead hazards, educate residents about lead, and / or inquire about a lead workshop. To help facilitate these good intentions, please allow us to introduce you to Community Energy Project (CEP)!

“Living Lead Safe” Workshops:

CEP can be reached at (503) 284-6827 or lead101@communityenergyproject.org. As a former REALTOR®, I can tell you their “Living Lead Safe” workshop would make an excellent office presentation or a wonderful seminar a sales agent could set up for his/her clientele or even a special offering a property manager could host for residents. It takes about an hour and I can tell you it is mind blowing!

Do You Know Why?

If we can extrapolate from the informal survey we conducted, most of you know that children are at the greatest risk of

lead poisoning but do you know why that is or why it's of particular concern in housing?

First of all, while there are other possible sources of lead poisoning, lead hazards are most commonly found in older homes. Lead poisoning can occur by drinking water contaminated with lead, swallowing chips of lead paint, or ingesting lead-based paint dust from remodeling or refinishing projects.

Lead paint was banned in 1978; however, the housing stock remains and so does the old paint [6]. The National Safety Council reports, 2/3 of homes built before 1940 and 1/2 of homes built between 1940 and 1960 contain lead-based paint. While few homes built after 1960 contain lead paint, consumer advocacy requirements apply to all residences built prior to 1978.

As for why lead affects babies and small children so profoundly it is because lead poisoning causes anemia, digestive problems, and damage to the central nervous system in still-developing bodies. Children exposed to lead can develop brain damage including a variety of learning and behavioral disabilities [7].

The risk to children is compounded by the fact that they (pets too) are often on the floor where lead dust too fine to see can settle and be inadvertently ingested. In addition, children (and pets) have been known on occasion to chew on woodwork within their reach, particularly when they're teething. Even if you are careful, small children (and pets) can still accidentally ingest paint by chewing on toys that collect tiny paint dust particles.

If you have lead paint on your property and would like it removed, contact a professional. This is not required of a housing provider but if it's something you're considering be sure you outsource the work; it is safer to pay a professional to do the removal than to try to do it yourself.

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 on the FHC0 website.

[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 <http://www.FHC0.org/mission.htm> and read the section entitled "View Local Protected Classes" for more information.

[2]<http://yosemite.epa.gov/OPA/ADMPRESS.NSF/931381DFCD9A5C308525779700424CCD/8CC7396FEBB2B1BE85257A2A006C9D01!OPENDOCUMENT>

[3]
http://www.justice.gov/usao/md/Public-Affairs/press_releases/Press12/

[4] Visit http://www.FHC0.org/pdfs/published%20articles/read_on%20articles/LeadChanges.pdf to learn about the changes and your requirement to use the revised version.

[5] Note that HUD / EPA offer some of these in alternative languages as well. Visit the HUD and EPA websites to find a comprehensive list.

[6] As long as the lead paint is sealed (painted over) and not chipping or cracking it should pose little health risks. However, special attention should be given to "friction points" where two painted surfaces rub such as windows and

doors.

[7] Symptoms of lead poisoning, according to the National Institute of Health Sciences, include headaches, muscle and joint weakness or pain, excessive tiredness or lethargy, behavioral problems or irritability, difficulty concentrating, loss of appetite, metallic taste in the mouth, abdominal pain, nausea or vomiting, and constipation. These symptoms are shared by many other illnesses. However, in cases where the symptoms occur for an extended period of time and no other cause has been found, lead poisoning should be considered.

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). 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 unit¹, 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.

¹Section 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 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 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!

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Qs about your rights and responsibilities under fair housing laws?

Visit 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 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 and read the section entitled "View Local Protected Classes" for more information.