

Lead Related Regulatory and Legislative Affairs

About the District's Lead Law

There are several District of Columbia lead laws. One of them has to do with the required testing of children under six years of age and the required reporting of those results. This is D.C. Law 16-265, the "Childhood Lead Screening Amendment Act of 2006," which became effective March 14, 2007 and is found at D.C. Official Code §7-871.01 et seq. More summarized information available at [lead screening guidelines](#).

This section summarizes the District's Lead Hazard Prevention and Elimination Act of 2008, as amended in 2010. The amended Act became effective on March 31, 2011, and is found at D.C. Official Code §8-231.01 et seq. This law makes the presence of lead-based paint hazards illegal in all residential dwelling units, in common areas in multifamily properties, and in child-occupied facilities such as daycares, built before 1978.

The law gives broad authority to the District Government to enter such places and conduct a special form of lead inspection, called a "risk assessment." A risk assessment determines where lead-based paint hazards may exist in a given property. If a District official finds that a lead-based paint hazard is present, then the property owner will receive a Notice of Violation or of Infraction from the District, as well as an Order to Eliminate Lead-Based Paint Hazards, specifying where the hazard is located and how the owner must go about eliminating it.

Anyone engaged in eliminating lead-based paint hazards must abide by a set of work practices described in the new law and must at minimum be trained in lead-safe work practices. Similarly, whenever a contractor (including painters, plumbers, electricians, carpenters, and others who work on housing) disturbs paint during the course of their work in a pre-1978 property, they must use lead-safe work practices and must "contain" the immediate work area, so that no dust or debris is spread beyond it, and so that occupants' belongings and well-being are protected.

The following summary highlights some of the District law's major components:

Definition of "Lead-Based Paint Hazard"

The presence of a lead-based paint hazard is a violation of the law. (See §8-231.02(a)) So it is important to understand just what a lead-based paint hazard actually is. The law adds an important new dimension to the traditional definition of a "lead-based paint hazard." The standard definition of a lead-based paint hazard consists of three elements: the presence of lead-contaminated dust, lead-contaminated soil, or deteriorating lead paint.

The District's law establishes that any paint in or on a pre-1978 residential property or "child-occupied facility" (including daycares, kindergarten classrooms, or preschools, provided they host children under six years of age on a regular basis) is presumed to be lead-based paint. This means that ***any paint in or on such a property that is not in intact condition is automatically considered to be a lead-based paint hazard.***

In addition, the District's definition of a lead-based paint hazard also includes a focus on workers who disturb paint during the course of their work. Anytime a worker (including carpenters, plumbers, electricians and painters) works on a pre-1978 residential property or child-occupied facility, they must take care to "contain" the work area in such a way as to prevent exposure to potential lead hazards.

“Containment” is defined in the law as “a system, process, or barrier used to contain lead-based paint hazards inside a work area.” Specific containment requirements will be spelled out in upcoming regulations. However, the new law already lists certain “work practice standards” to which contractors and others must adhere, including the use of lead-safe work practices. (See §8-231.11) These too will be further detailed in upcoming regulations.

In terms of enforcement, this means that:

- Whenever a District Government inspector finds deteriorated paint in or on pre-1978 residential properties or child-occupied facilities such as daycare centers, it will be treated as a lead-based paint hazard, and a Notice of Violation or a Notice of Infraction will be issued, requiring elimination of the hazard. And,
- If a contractor disturbs paint in or on a pre-1978 residential property or child-occupied facility and fails to use lead-safe work practices while doing so, a District Government official can issue the contractor a Cease and Desist Order and a Notice of Violation or a Notice of Infraction.

Increased Ability to Inspect

- Pursuant to the Lead Hazard Prevention and Elimination Act, the District Government can inspect residential housing or child-occupied facilities whenever there is a “reasonable belief” that a lead-based paint hazard may be present. This means that if an older property’s exterior has visible peeling paint on it, that fact alone is sufficient to trigger a lead risk assessment on the interior. It’s also of course sufficient on its own to draw a Notice of Violation and an Order to Eliminate Lead-Based Paint Hazards.
- The “reasonable belief” that is necessary for these inspections to occur can be based on anything ranging from a complaint that peeling paint is present in a pre-1978 residential property, to knowledge that a particular neighborhood contains an above-average amount of poorly maintained housing. This ability for District Government inspectors to proactively search for lead hazards and require their elimination represents a major new tool for the District, helping prevent exposure to lead *before* a child is harmed. It’s also important to note that the law contains no requirement that a child must be present (either as a resident or as a regular visitor) in order for a lead risk assessment to occur in residential buildings.
- The recent amendments to the Lead Hazard Prevention and Elimination Act also clarify that peeling paint violations of the Housing Code must be treated as lead violations and enforced accordingly, if they are found in pre-1978 residential housing. The Department of Consumer and Regulatory Affairs (DCRA) enforces the District’s housing code regulations, meaning that DCRA code inspectors are also responsible for enforcing the District’s lead law in situations where they find loose or peeling paint in pre-1978 residential housing. (See §8-231.18a)

New Flexibility and Responsibilities in Eliminating Lead Hazards

- Enforcement officials have the flexibility to allow property owners to eliminate lead-based paint hazards by a variety of techniques, and not just by requiring specific “abatement” measures that require the use of a District-certified lead abatement contractor. Enforcement officials may decide if a property owner who is required to eliminate lead-based paint hazards may do so by using interim controls, which does not require the use of a District-certified abatement contractor. However, in such situations, the person doing the work must be trained in lead-safe work practices and must comply with the District’s work practice standards. (See §8-231.11).
- In some situations, enforcement officials may require abatement of some lead-based paint hazards, while allowing interim control measures to eliminate other hazards at the same property. In those cases, a District-certified lead abatement contractor will still need to be hired, at least to do the abatement activities. It’s critical to note that before starting any abatement activity, a DDOE lead abatement permit must first be secured. In all situations, regardless of whether lead abatement or interim controls are used, the owner must

secure the services of an independent, District-certified lead inspector or risk assessor, who must perform a "clearance examination" to make sure no lead-based paint hazards remain on the property. Enforcement staff now also have the option to require periodic re-testing of properties where interim controls were used instead of abatement measures. In those instances, a clearance examination may have to be repeated at a future date, in order to demonstrate that those interim control measures continue to be effective over time.

- Also in all situations, owners who are required to eliminate lead-based paint hazards must address and correct any underlying defects identified as contributing to the hazards. This typically consists of excess moisture conditions that contribute to paint failure, or deteriorated substrates or building components that must be replaced.
- In addition, the District's lead law gives enforcement officials the right to order landlords to arrange and pay for temporary relocation of tenants whose homes contain lead-based paint hazards. When this occurs, the landlord must "make all reasonable efforts to ensure that the household is relocated to a dwelling unit that is in the same school district or ward, near public transportation, as appropriate." (See §8-231.03(d)[2])

Groundbreaking Turnover Requirements

- Local lead disclosure requirements apply to owners of pre-1978 residential properties. While there is a long-standing lead disclosure requirement under Federal law that applies whenever there is a change in occupancy of a pre-1978 residential property, the District's equivalent lead disclosure law requires an extra element. **In addition to the traditional disclosure requirements pertaining to the presence of lead-based paint and/or lead-based paint hazards, affected owners must also disclose any "pending actions" ordered by the District Government pursuant to the new lead law. These disclosures must occur "before [a] purchaser or tenant is obligated under any contract to purchase or lease the dwelling unit."** (See §8-231.04(a)(3))
- If a pre-1978 dwelling unit will be occupied **or regularly visited by a child under 6 years old or by a pregnant woman, the property owner must** provide a completed disclosure form **"before the tenant is obligated under any contract to lease the dwelling unit."** (See §8-231.04(b)) It's important to note that the property owner must disclose any information about the presence of lead paint or of lead-based paint hazards that is "reasonably known" to the owner. For instance, if the owner has not done a paint touch-up job to the unit in more than 5 years, it is reasonable to expect that paint will be deteriorating, and the owner must indicate this on the disclosure form.
- **A second significant turnover-based requirement has to do with the production of a "clearance report."** (See §8-231.01(6)) Whenever a pre-1978 residential rental property is about to be occupied by either a pregnant woman or a child under the age of six years, in addition to the disclosure information described above, **the owner must also submit a clearance report** that provides documented proof that the particular rental unit in question was found not to contain any lead-based paint hazards.
- **This clearance report must be less than one year old.** (See §8-231.04(b)) The recent amendments to the District's lead law include a new related provision, allowing tenants of pre-1978 dwelling units in which a child under 6 years old or a pregnant woman lives or which such a person regularly visits, to "notify the owner of the property in writing" of that fact, after which the owner has 30 days to provide the tenant with a clearance report issued within the previous 12 months. (See §8-231.04(c))

- District law also requires that property owners disclose to their tenants what their rights are under the lead law. This must occur “whenever the tenant executes or renews a lease for the unit and whenever the owner provides notice of a rent increase.” (See §8-231.04(e))
- Owners have one additional disclosure requirement. They are required to notify their tenants of the presence of lead-based paint “within 10 days after discovering its presence,” along with providing them the federal Lead Warning Statement and the federal “Protect Your Family From Lead in Your Home” pamphlet. (See §8-231.04(f))
- **To implement these groundbreaking provisions of the new lead law, the District Government has issued a disclosure form** that property owners must use, as well as a form that describes **tenants’ rights under the new law.**
- *NOTE: THE TENANTS RIGHT FORM WAS NOT INCLUDED WHEN THE REGULATIONS (Title 20 DCMR Chapter 33) CAME OUT THAT ENFORCE THE ACT. Provided with forms, are guidance documents on how property owners should proceed in filling out the disclosure form, and what the key differences are between the District’s local disclosure requirements and those required by the federal government.*
- **Important exemptions** exist for property owners who are subject to these turnover requirements. First, they are exempt from having to produce a clearance report if they have documentation from a risk assessor or a lead inspector “certifying that the unit is a lead-free unit.” Second, they are also exempt if they have already produced three clearance reports for a given unit, at least a year apart from each other, within the previous seven years. However, this second exemption does not apply if the property owner is or was subject to any housing code violations during the previous five years. (See §8-231.04(d))

Some Key Definitions

- **“Abatement”** means any measure or a set of measures, except interim controls, that eliminates lead-based paint hazards by either the removal of paint and dust, the enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.
- **“Interim Controls”** means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.
- **“Lead-based paint hazard”** means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint or presumed lead-based paint, or lead-based paint or presumed lead-based paint that is disturbed without containment.
- **“Lead-free property”** means a property that contains no lead-contaminated soil, and the interior and exterior surfaces do not contain any lead-based paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter.
- **“Lead-free unit”** means a unit for which the interior and exterior surfaces appurtenant to the unit do not contain any lead-based paint or other surface coatings

that contain lead equal to or in excess of one milligram per square centimeter, and for which the approaches thereto remain lead-safe.

- Lead-safe work practices means a prescribed set of activities that, taken together, ensure that any work that disturbs a painted surface on a structure constructed prior to 1978, generates a minimum of dust and debris, that any dust or debris generated is contained within the immediate work area, that access to the work area by non-workers is effectively limited, that the work area is thoroughly cleaned so as to remove all lead-contaminated dust and debris, and that all such dust and debris is disposed of in an appropriate manner, all in accordance with the methods and standards established by the Mayor by rule consistent with applicable federal requirements, as they may be amended.
- Presumed lead-based paint means paint or other surface coating affixed to a component in or on a dwelling unit or child-occupied facility, constructed prior to 1978.
- Underlying conditions means the source of water intrusion or other problem that is causing paint to deteriorate which may be damaging the substrate of a painted

AMENDMENT IN THE NATURE OF A SUBSTITUTE
FOR BILL 17-0936, THE "LEAD HAZARD
PREVENTION AND ELIMINATION AMENDMENT
ACT OF 2008"
ADDITIONAL LEGISLATIVE MEETING
DECEMBER 16, 2008

A BILL 17-0936 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Sec. 16. Serving of notice, civil penalties.

(a) Any notice required by this act may be served upon an owner of the dwelling or agent of the owner in the same manner as a summons in a civil action or by registered or certified mail to his or her last known address or place of residence.

(b) Any violation of this act or implementing rule is punishable by a civil penalty not to exceed **\$ 25,000 for each day of each offense. Each day a violation continues shall be deemed a separate offense. 181**

(c) Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act or the rules issued under this act pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42, D.C. Official Code § 2-1801 et seq. Adjudication of any infractions shall be pursuant to the Civil Infractions Act.

(d) In determining the severity of a civil penalty under subsection (a) of this section, the Superior Court of the District of Columbia shall take into account the nature, circumstances, extent, gravity, actual or potential harm to the environment, and actual or potential harm to human health, of the violation or violations and, with respect to the violator, ability to pay,

any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(e) The Attorney General for the District of Columbia may commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief to enforce compliance with the provisions of this act.

(f) As specified by the Mayor in rulemaking, a person adversely affected by an action taken pursuant to the provisions of this subchapter, or the rules or regulations promulgated pursuant to this subchapter, is entitled to a hearing before the Mayor upon filing with the Mayor, within 15 calendar days of such action, a written request for a hearing. Such hearing shall be held in accordance with D.C. Official Code § 2-509.

Sec. 17. Criminal penalties.

(a) Notwithstanding any other provision of this subchapter, any person who knowingly or willingly violates the provisions of this act or its implementing rules, shall be subject, upon conviction, **to a fine of not more than \$ 25,000 for each day of each violation, or to imprisonment for not more than one year, or both.**

(b) Falsification of information required by this act shall be a violation of this act.

(c) In determining the severity of a criminal penalty, the Superior Court of the District of Columbia shall take into account the nature, circumstances, extent, gravity, actual or potential harm to the environment, and actual or potential harm to human health of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(d) All prosecutions under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia and shall be instituted by the Attorney General.

Please keep Veterans Environmental Technology Services (VETS) in mind when you are ready to deal with the issues listed above. We stand ready to help you through the process.

Best Regards,
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