



Avoiding Big Costs and Huge Penalties

BY STEPHEN MASEK

Most apartment owners, managers, and contractors have been ignoring lead-based paint, even after the 1992 Title X regulations came out. Testing was, and is not required, but the widespread practice of conducting work as if lead-based paint is not present caused the various organizations concerned about lead poisonings to exert even more pressure on the United States Environmental Protection Agency (EPA). The new Renovation, Repair, and Painting (RRP) regulations were no surprise. It is also no surprise that the new regulations carry severe penalties and are loaded with very detailed requirements. EPA had no choice except to come up with something which no reasonable person could ignore.

Some people may think that the new Congress will loosen or delay the new regulations, but that is highly unlikely, as doing so would leave them wide open to attacks claiming they want to poison children and working-class people, and it would be a significant expenditure of precious political capital. Even if they might want to risk dealing with the issue, they have far more pressing issues to address.

Some owners and managers have told us that they don't need inspections, as their contractors have told them that they will properly address the issue. There are several major flaws in that line of reasoning:

1) If the contractors are indeed properly addressing the issue, they

need to significantly raise their prices, so the owner will quickly spend far more than the small cost of a proper lead-based paint inspection.

- 2) Tenants will be worried by the required notifications and signs which are posted. This would be a real shame, especially in situations where there is little or no lead-based paint actually present.
- 3) Some contractors oppose inspections, as inspections are essentially a way of cutting back from a need to pay contractors for expensive lead-safe work practices for every painted surface.
- 4) If they hire a handyman or other person who could be considered an employee, owners and managers are the contractor, and need to be registered and fully compliant with both the EPA and OSHA regulations.
- 5) Owners must not forget that they are the deep pocket, and lawsuits will always seek-out the real money.

"EPA reserves the option, in appropriate circumstances, of seeking a penalty that might exceed the respondent's ability to pay, cause bankruptcy, or result in a respondent's inability to continue in business." This startling statement is from US EPA's recently published enforcement guidelines. What kind of penalty do you think they might levy for something which

seems as minor as not have separate wash and rinse water buckets for mopping after work which did or might have disturbed lead-based paint? How about \$37,500 per day, per violation?

Some people may wonder what is happening with enforcement. It is important to realize that EPA may not publish information on enforcement actions taken today until one or two years from now. This is the long-standing situation with most of their enforcement, not just the lead-based paint regulations. Amongst other reasons, they probably do not want to publicize accusations which turn out to be false. That is good for owners, managers, and contractors. However, taking the lack of publicity regarding recent enforcement actions as an indication that the regulations are not being enforced could be a very costly mistake.

Here are several other examples of the numerous potential penalties:

\$37,500 for failure to:


- Use trained Renovator(s) — the 8 hour training class your association offers
- Have the Renovator(s) train others (must be documented in detail)
- Properly remove polyethylene sheeting (must be folded and handled certain ways)
- Vacuum carpets & rugs with a beater bar attachment

\$30,000 for not:

- Closing windows & doors according to the detailed rules in the regulations
- Closing & covering registers in ways outlined
- Keeping records properly
- Keeping waste contained and enclosed

\$16,000 for failure to:

- Provide the new pamphlets
- Properly post signs
- Keep signs readable
- Properly notify tenants

We've been warning people that the EPA means business, and the most astute managers and owners have been clamoring for inspections of their properties. Many have been pleasantly surprised to find little of no lead-based paint at their post 1960 properties. My company has issued "lead-based paint free" certificates for 34% of the apartment properties we've inspected in the past 9 months. In all of the properties built in the 1960s and 1970s in which we found lead-based paint, it was on less than 1% of the painted surface area of the buildings. Even the older properties do not have lead-based paint everywhere. Knowing which paint is lead-based and needs to be handled properly and which may be handled without costly special procedures is vital to staying out of trouble and saving money. 

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