

March 24, 2010

## New Expectations Concerning Lead

Course Instructor: Rick Reibstein<sup>1</sup>

Teaching Methods: the instructor will use no powerpoint or other mechanical devices. The instructor will talk and hand out hard copies of the rules he discusses and relevant portions of federal webpages. Questions will be encouraged. The course is personally interactive.

First hour: learning objectives. Students will learn the reason for lead disclosure and understand the basic principles of lead law – why it exists and why it makes sense.

The course begins with an assessment of attendees' knowledge of existing lead law. 15 minutes.

The problem of lead poisoning. How lead affects the body, the brain, and populations. 15 minutes.

Why real estate professionals benefit from understanding the lead issue and the best way of responding to it. Reducing the risk of harm to others reduces the risk of liabilities. Failing to pay attention to lead can lead to administrative and civil liabilities, loss of business, reputational penalties and costly cleanups. Paying attention to lead can open up business opportunities and improve customer relations as well as reducing or eliminating potential liabilities. The best way to reduce liabilities. 15 minutes.

The Federal Residential Lead-Based Paint Disclosure Rule. This law, which differs from state law in little-known ways, applies to all real estate professionals conducting leases or sales of residential properties constructed before 1978. It is important to know how to institute an effective compliance program. 15 minutes.

Second hour: Going through the Disclosure Rule section by section. Attendees will receive the written handouts at this time – including a copy of the regulations to go through in class, and take away with them for future reference. Learning objectives: ensure that realtors are familiar with the details of the law that applies to them and imposes significant potential liabilities for violations. This will provide them with the security of knowing just how to be safe from such liability.

Scope and definitions. Including: exceptions, exemptions, the special meaning of available as “reasonably obtainable”, the definition of “common areas”, “agent”. 20 minutes.

The requirements pertaining to sellers and the specific requirements of the disclosure form. 20 minutes.

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The provisions for enforcement and liability and the specific requirements pertaining to agents. 20 minutes.

Third hour: Related Rules. It is important to place the above federal rules in the context of the other rules that pertain to lead-based paint. The learning objectives are for realtors to understand how the federal disclosure rule relates to other rules and civil liability. Realtors will gain a fuller understanding of how to conduct their business safely.

State health laws requiring abatement, clean air law, worker-protection law, and negligence. 10 minutes.

The New Federal Residential Renovation Rule. This law already requires that when renovations are performed in child-occupied facilities or housing built before 1978, owners and occupants, and parents or guardians of children occupying the facility, must be notified of the work and receive the *Renovate Right* pamphlet, which contains important lead hazard information. It applies to anyone disturbing lead-based paint while performing renovation activities for compensation, which includes landlords and property managers who are compensated for improvements to properties through lease provisions. In April, 2010, anyone who is compensated for work that disturbs paint in child-occupied facilities or pre-1978 residential housing must be trained in lead-safe work practices, and must follow them to prevent the dissemination of lead dusts. Documentation that all of these requirements have been followed is necessary to demonstrate compliance with the rule. The new rule strengthens the expectation that lead dusts must be contained and cleaned up, which will increase the chances for civil liability when lead poisoning occurs because lead paint has been disturbed or allowed to deteriorate. Understanding the basics of protecting workers and residents during any renovation activities that might disturb lead-based paint is not only necessary for meeting legal expectations for taking reasonable protective actions, but also for protecting property values and creating strong customer relations. 30 minutes.

Federal Work-Practice Requirements for Lead-Based Paint Abatement. This law applies to contractors performing lead abatement, but it is important for property owners and managers to understand what is required if they are to get their money's worth, protect their property's value, and defend against potential civil liabilities. 10 minutes.

Coping with Enforcement. If by chance a realtor is contacted by enforcement officials, it is important to know one's options. The federal penalty process provides means for reducing liabilities, and realtors must know how to take advantage of them. How to respond to requests for information, inspections, or notices of violation. How to negotiate for the best settlement. Understanding the penalty policy. 10 minutes.

There are many ways in which the similar and overlapping requirements of various federal, state and local authorities responsible for addressing lead-based paint hazards can confuse the real estate professional. This course will help those who instruct real estate professionals to understand how these various rules work together. The law will be covered with reference to basic principles, such as the Right to Know and Good Faith, which will help attendees to organize and remember the information.

The Regulated Community Compliance Project of Boston University, established in 2003, provides assistance to the regulated community in understanding and complying with important environmental, health and safety requirements. Attendees are invited to contact the instructor at any time following the course to receive individualized assistance. The course presenter is an attorney who teaches environmental law at BU, and who has had several years of experience at state and federal environmental agencies providing assistance and enforcing the law.

Course materials will consist of the Federal Regulations discussed above: 40 CFR Part 745, Subparts E and F, links to federal sources of information, and selected information from the pamphlets that federal law requires be distributed and the pertinent websites.

Cancellation policy: all registrants will be asked for a contact number. In the case of cancellation each registrant will be contacted by phone. When the course is hosted by a sponsor who takes care of this, such as a real estate board, their practice will be followed. Further funding will be sought to continue this activity so that it can be delivered for free. Otherwise, the course will typically be sponsored and payment will come from the sponsor, and attendees will pay a fee to them, receive the course as part of their training, or be courtesy guests.