

Guidance on The Homebuyer's Option To Test For Lead-Based Paint and Lead-Based Paint Hazards

The HUD/EPA Disclosure Rule includes the following language on a homebuyer's right to conduct a lead hazard evaluation.

24 CFR Part 35, Subpart A:

35.1 Opportunity to conduct an evaluation

- (a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and /or lead-based paint hazards
- (b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by indicating so in writing.

What does this option mean for the homebuyer?

- ◆ After signing a contract, the buyer has 10 days to perform a risk assessment or paint inspection in the home. The buyer and seller may mutually agree to lengthen or shorten this 10-day time period.
- ◆ If the buyer exercises this right, the buyer is responsible for scheduling and paying for the risk assessment or the paint inspection.
- ◆ If the lead hazard evaluation indicates that lead-based paint and/or lead-based paint hazards are found, the buyer has the right to cancel the contract. However, this right does not exempt the buyer from any costs of cancellation if the right to cancel is not made clear in the contingency to the sales contract. HUD and EPA have suggested optional wording as provided in Exhibit A below.

What does this option mean for the seller?

- ◆ The sales contract must include language regarding the right to conduct a lead hazard evaluation. It must state:
 - The buyer's right to conduct an evaluation within 10 days (or other mutually agreed upon time period) and to cancel the contract if lead-based paint and/or lead hazards are identified.
 - Or, that the buyer has waived the right to conduct a lead hazard evaluation.
- ◆ The seller is not required to pay for the paint inspection or risk assessment.
- ◆ If the seller is dealing with two potential buyers, one of who waives the right to the lead hazard evaluation and one of whom does not, the seller can choose to sign a contract with the buyer who waives the right.

How does this rule affect a homebuyer program design?

- ◆ If a homebuyer is purchasing a home with Federal assistance, that homebuyer, like any other buyer has the right to request a risk assessment or a paint inspection.
 - ◆ Participants in the program must be informed of this right.
 - ◆ Program administrators face a design decision: Will the program pay for the evaluation if the homeowner requests it?
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How does the rule affect homebuyer program procedures?

- ◆ If the evaluation reveals lead-based paint and/or hazards, there is no requirement to address the hazards, however, some action is prudent.
 - The Lead Safe housing rule requirements for acquisitions require only the stabilization of deteriorated paint and passing clearance.
 - If the evaluation reveals intact lead-based paint, there is no action to be taken.
 - If the evaluation reveals lead hazards, no action is required by Federal regulations but it would be prudent to address the hazards identified, either through abatement or interim controls.
- ◆ Four options for addressing lead hazards found due to such evaluations are:
 - Provide rehabilitation loans or refer buyers to a rehabilitation loan program
 - If rehabilitation hard costs or the federal assistance exceed \$5,000, the requirements of Subpart J apply – all hazards would have to be addressed and clearance passed.
 - The buyer would have to qualify for the additional assistance
 - Sources of rehab funding include HOME, CDBG, 203(k), state/local rehab funds
 - Reject homes with lead hazards from the program and assist the buyer in finding another home.
 - This policy would have to be documented in the program requirements and communicated to the buyer in advance
 - This policy should also be communicated to sellers prior to signing a contract.
 - Ensure that the sales contract signed includes a contingency allowing the buyer to cancel the contract if lead-based paint or lead-based paint hazards are found.
 - Have the seller fix the hazard prior to purchase (especially if the hazards are small).
 - In this case, no federal funds can be used for the work.
 - It would be prudent to require that the seller use lead safe work practices and that the unit to pass clearance prior to closing.
 - Negotiate the price of the home down to provide funds for the buyer to fix the hazards. (This is not common but is permissible).
 - In such a case, if rehabilitation hard costs or federal assistance exceed \$5000, the requirements of subpart J apply.

Exhibit A: Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar day after ratification [insert date 10 days after contract ratification or a date mutually agreed upon]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the HUD/EPA/CPSC pamphlet *Protect Your Family From Lead-Based Paint In Your Home* for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within ___ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the seller does not elect to make repairs, or if the Seller makes a counter-offer, the Purchaser shall have ___ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.