

Print

The Philadelphia Code

CHAPTER 6-800. LEAD PAINT DISCLOSURE 114

§ 6-801. The Council makes the following findings.

(1) Forty-five percent (45%) of the Philadelphia children who were screened for lead poisoning in 1993 had levels of concern as defined by the Centers for Disease Control. This amounts to 22,302 children.

(2) The Centers for Disease Control has determined that the presence of lead in the bloodstream at levels as low as ten (10) micrograms per deciliter indicate a level of concern requiring minimally that such children be monitored and tested every three to four months.

(3) The Philadelphia Department of Health has estimated that sixty-five thousand (65,000) Philadelphia children under the age of six (6) years are poisoned by lead and most of those poisoned are undiagnosed and untreated.

(4) Environmental exposure to even low levels of lead increases a child's risk of developing permanent learning disabilities, reduced concentration and attentiveness, and behavior problems which may persist and adversely affect the child's chances for success in school and life. Exposure to higher levels of lead can cause an intellectual disability, seizures and death. 115

(5) The most significant remaining source of environmental lead is lead-based paint in housing built prior to 1978 and house dust and soil contaminated by lead deposits and lead-based paint. The ingestion of household dust containing deteriorating lead or abraded lead-based paint is the most common cause of lead poisoning in children.

(6) Since there is no effective medical treatment for the great majority of lead-poisoned children, and the damage from lead can be irreversible, prevention efforts such as information dissemination and disclosure requirements are vitally necessary and critical tools for the eradication of lead poisoning.

(7) The United States Congress has enacted the "Residential Lead-Based Paint Hazard Reduction Act of 1992", with the purpose of commencing the elimination of lead-based paint hazards and creating a national approach to the presence of lead-based paint, and proposes that the partnership between the Federal and local governments envisioned by the Congress will be enhanced and the dangers of lead-based paint reduced, by the enactment of regulations within The Philadelphia Code, codifying, implementing, supplementing and enforcing the disclosure requirements of the federal law.

(8) The purpose of this legislation is to provide an educational tool which will assist the Department of Health in identifying, reducing and combating lead poisoning in Philadelphia children.

(9) The task of eliminating lead from those properties that house children will be a costly one and will require a public/private collaboration and partnership in order to preserve and to protect Philadelphia's affordable housing stock.

§ 6-802. Definitions. 116

In this Chapter, the following definitions shall apply:

- (1) *Certified Lead Inspector.* A person who is certified by the Philadelphia Department of Public Health as qualified by training and experience to conduct comprehensive lead inspections and risk assessments, or by the Commonwealth of Pennsylvania as an "inspector-risk assessor" pursuant to the Pennsylvania Department of Labor and Industry's Lead-Based Paint Occupation Accreditation and Certification Regulations; or is certified by the EPA and trained as a lead dust sampling technician.
- (2) *Comprehensive Lead Inspection.* A surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.
- (3) *Deteriorated Paint.* Paint or other coating that is cracking, flaking, chipping, peeling, chalking, not intact or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated coating.
- (4) *Lead-based Paint.* Paint or other surface coatings that contain lead in excess of limits established by Federal Law or Regulation.
- (5) *Lead-based Paint Hazard.* Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency or the Philadelphia Department of Public Health.
- (6) *Lead-Contaminated Dust.* Surface dust that contains a mass per area concentration of lead equal to or exceeding 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills based on a wipe sample, or such other lesser level of lead either: (a) used to define a "dust-lead hazard" under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.
- (7) *Lead-Contaminated Soil.* Soil that contains lead in excess of 400 ppm or such other lesser level of lead either: (a) used to define a "soil-lead hazard" in a play area under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.
- (8) *Lead Free.* The circumstance in which the interior and exterior surfaces of a property do not contain any lead-based paint and the property contains no lead-contaminated soil or lead-contaminated dust.
- (9) *Lead Safe.* The circumstance in which a property is free of a condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint, deteriorated presumed lead-based paint, or other similar threat of lead exposure due to the condition of the property itself.
- (10) *Presumed Lead-Based Paint.* Surface coating affixed to a surface that was constructed prior to March 1978 that a landlord is unable to demonstrate contains no lead.
- (11) *Risk Assessment.* An on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including:
 - (a) information gathering regarding the age and history of the housing and occupancy by children under age 6;
 - (b) visual inspection;

- (c) limited wipe sampling or other environmental sampling;
- (d) other activity as may be appropriate; and
- (e) provision of a report explaining the results of the investigation.

(12) *Targeted Housing.* For purposes of the provisions of this Chapter relating to lease agreements, residential property built before March 1978, but excluding: (a) dwelling units developed by or for an educational institution for the exclusive residential use and occupancy by that institution's students; (b) buildings containing dwelling units all of which are leased only to students enrolled in a college or university degree program; (c) dwelling units owned or subsidized by the Philadelphia Housing Authority or its subsidiaries, or privately owned but currently leased under the Housing Choice Voucher Program and therefore subject to federal requirements administered by HUD; and (d) dwelling units in which children aged six (6) and under do not and will not reside during the lease term.

(13) *Valid Certification.* For a certification that a property is lead safe, a certification based on an inspection no more than 24 months prior to the date a lease is entered into. For a certification that a property is lead free, a certification based on an inspection performed at any time prior to the date a lease is entered into.

§ 6-803. Lead Disclosure Obligation. 117

(1) Before any buyer is obligated under any contract to purchase residential housing constructed prior to 1978, the seller shall disclose the absence or presence of lead-based paint or lead-based paint hazards. This disclosure shall take one of the two following forms:

(a) the production of the results of a comprehensive lead inspection and risk assessment by a certified lead inspector; or

(b) provision of a multi-lingual form provided by the Philadelphia Department of Public Health containing the following statement:

"The Philadelphia Department of Public Health has determined that most housing built in Philadelphia before 1978 contains dangerous lead paint. This property was built before 1978. Therefore, without a comprehensive lead inspection, conducted by a certified lead inspector, showing there is no lead paint or there are no lead-based paint hazards, you can assume that this property likely contains lead-based paint."

(2) Before any buyer is obligated under any contract to purchase residential housing constructed prior to 1978, the seller is also required to provide the buyer with a lead hazard information pamphlet as prescribed or approved by the Philadelphia Department of Public Health.

(3) *Rental Protections.*

(a) No lessor shall enter into a lease agreement with a lessee, other than a renewal lease, to rent any Targeted Housing, or a unit in such Targeted Housing, unless (.1) he or she provides the lessee with a valid certification prepared by a certified lead inspector stating that the property is either lead free or lead safe; and (.2) the lessee acknowledges receipt of the certification by signing a copy.

(b) A valid certification that a property is lead safe under this section shall state that the certified lead inspector determined that the property or unit was free of any Deteriorated Paint, and that interior dust samples were collected in compliance with EPA regulations, including 40 C.F.R. § 745.227 and any

amendments or successor regulations, were tested and were found not to contain Lead-Contaminated Dust as defined in this Chapter. Additional statements or test results are not required. Any corrective action taken in order to qualify the property for such certification shall be performed in compliance with applicable laws.

(c) Upon entering into such a lease agreement, the lessor shall (.1) provide a copy of the signed certification to the Department of Public Health; and (.2) provide to the tenant, in addition to any written notifications required by applicable laws, a written notification advising the tenant to perform a visual inspection of all painted surfaces periodically during the term of the lease, and advising that the tenant may inform the lessor of any cracked, flaking, chipping, peeling, or otherwise deteriorated paint surfaces. Upon receipt of any such tenant notification the lessor shall promptly inspect and correct any defective conditions as required by section PM-305.3 of the Philadelphia Property Maintenance Code and in compliance with other applicable laws.

(d) Upon a City inspection for lead safety at any property rented by a lessor for which a lessor has not provided the lessee the certification required in this section, the lessor shall be liable to the City for the costs of such inspection.

§ 6-804. Right to Conduct Independent Inspection or Risk Assessment and Right to Rescind.

(1) Every contract for the purchase of residential housing constructed prior to 1978, shall provide, in writing, that the buyer has a ten (10) day period (unless the parties agree to a different period of time), during which time the buyer may, at the buyer's expense, obtain a comprehensive lead inspection or risk assessment from a certified lead inspector. Should the inspection reveal lead-based paint or lead-based paint hazards on the premises, the buyer may terminate the contract of purchase within five (5) days of the receipt of the inspection report by the buyer, with all deposit moneys paid on account to be refunded to the buyer (unless the parties agree in writing to a different disposition of such deposit moneys). Failure of the buyer to obtain such inspection within the permitted ten (10) days and/or failure to terminate the contract upon a finding of lead-based paint or lead-based paint hazard within the five (5) day period will constitute a waiver of the right to conduct an independent inspection and the contract will remain in full force and effect.

(2) Every lease, whether oral or written, of residential housing constructed prior to 1978, shall provide in writing, that the lessee has a ten (10) day period (unless the parties agree in writing to a different period of time), during which time the lessee may, at the lessee's expense, obtain a comprehensive lead inspection and risk assessment from a certified lead inspector. Should the inspection reveal lead-based paint or lead-based paint hazards on the premises, the lessee may terminate the lease within two business days of the receipt of the inspection report, with all moneys paid on account to be refunded to the lessee. Failure of the lessee to obtain such inspection within the permitted ten days and/or failure to terminate the lease upon a finding of lead-based paint or lead-based paint hazards within the two-day period will constitute a waiver of the right to conduct an independent inspection and the lease will remain in full force and effect.

(3) Upon renewal of an existing lease, any lessee shall have the right to proceed with an inspection or risk assessment as provided by Section 6-804(2) except that such renewing lessee shall not be required to terminate the lease within two (2) days of performance of a comprehensive lead inspection or a risk assessment, but shall be afforded a ten (10) day period to notify lessor in writing of lessee's intention to terminate the lease, with actual termination and vacation of the premises to occur at a time not to exceed ninety (90) days after receipt of the comprehensive lead inspection or risk assessment, during which

period all lease obligations shall remain in full force and effect. 118

§ 6-805. Lead Warning Statement.

(1) Every contract for sale of residential housing constructed prior to 1978 shall contain the following lead warning statement in large type:

"Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to disclose to the buyer the presence or absence of any lead-based paint and/or lead-based paint hazards. A comprehensive lead inspection or a risk assessment for possible lead-based paint and/or lead-based paint hazards is recommended prior to purchase or lease."

(2) Every rental agreement for residential housing constructed prior to 1978 shall contain the following lead warning statement in large type:

"Every lessee of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any interest in residential real property is required to disclose to the lessee the presence or absence of any lead-based paint and/or lead-based paint hazards. A comprehensive lead inspection or risk assessment for possible lead-based paint and/or lead-based paint hazards is recommended prior to lease."

§ 6-806. Acknowledgment by Buyer. 119

(1) The buyer of any residential housing constructed prior to 1978, shall confirm in writing on a certification of disclosure form provided by the Philadelphia Department of Public Health, that he or she:

- (a) has received a written disclosure of lead-based paint and/or lead-based paint hazards;
- (b) has received and read the lead warning statement;
- (c) has received the lead hazard information pamphlet;

(d) was provided with a ten (10) day opportunity (unless the parties mutually agree upon a different period of time, by a separate writing) before becoming obligated under the contract to purchase during which the buyer was permitted access to the housing to obtain an inspection for the presence of lead-based paint and/or lead-based paint hazards.

§ 6-807. Certified Lead Inspectors.

(1) Persons retained to perform comprehensive residential lead inspections pursuant to Sections 6-803 and 6-804, shall be certified by the Philadelphia Department of Public Health until such time as

the Commonwealth of Pennsylvania institutes state-wide certification.

(2) The Philadelphia Department of Public Health shall establish by regulation criteria for the certification of residential lead inspectors no later than ninety (90) days after the enactment of this Ordinance.

§ 6-808. Residential Lead Inspections.

(1) Residential lead inspections and risk assessments performed pursuant to Sections 6-803(1)(a) and 6-804, shall be conducted in accordance with regulations promulgated by the Philadelphia Department of Public Health until such time as the Commonwealth of Pennsylvania institutes state-wide regulations.

(2) The Philadelphia Department of Public Health shall promulgate regulations for conducting residential lead inspections and risk assessments no later than ninety (90) days after the enactment of this Ordinance.

§ 6-809. Remedies. 120

(1) Where the seller does not comply with the provisions of Sections 6-803 or 6-804 the buyer shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction.

(2) Where the lessor does not comply with the provisions of Section 6-804 the lessee shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction.

(a) Any lessee who has not received disclosure shall first notify the lessor of the non-compliance in writing. The lessor shall have ten (10) days to remedy the non-compliance after which his/her failure to comply shall entitle the lessee to bring a court action for all appropriate relief.

(3) Where a lessor does not comply with any provision of Section 6-803, the lessee shall be entitled to bring an action in a court of competent jurisdiction and a prevailing lessee shall be entitled to the following remedies:

(a) an order requiring the lessor to provide the required certification and the performance of the necessary work to make the property lead safe;

(b) damages for any harm caused by the failure to provide the certification;

(c) exemplary damages of up to \$2,000;

(d) abatement and refund of rent for any period in which the lessee occupies the property without a certification having been provided; and

(e) attorney's fees and costs.

(4) Where a lessor does not comply with any provision of Section 6-803(3)(a), the lessor shall be denied the right to collect rent during or for the period of noncompliance.

(5) The provisions of this Ordinance shall be liberally construed to effectuate its purpose of

disclosure.

§ 6-810. Remedies Not Excluded.

(1) Nothing in the above provisions shall relieve the seller or lessor of the duties to abate any lead-based paint hazards in the housing required by law or regulation, or any other duties otherwise established by law to protect against lead-based paint hazards. The seller or lessor is also not relieved of any liability for damages or other relief under any applicable law or legal theory arising from the disclosure of lead-based paint in the housing.

(2) Nothing in the above provision shall relieve the seller or lessor of the obligation under the Pennsylvania Human Relations Act, 43 P.S. § 955, not to discriminate in the sale or rental of housing to families with children.

(3) The inclusion of a provision in a document related to the sale or rental of housing which would preclude the sale or rental to a family with children because the housing contains lead-based paint or lead-based paint hazards is prohibited. Any seller or lessor who attempts to preclude the sale or rental of housing to a family with children because of the existence of lead-based paint or lead-based paint hazards shall, in addition to any other legal actions, be subject to the penalties provided in Section 6-811 below.

§ 6-811. Penalties. 121

Any person who fails to comply with the provisions of this Chapter shall be subject to a fine or penalty of no more than two thousand dollars (\$2,000) per offense. Each day of non-compliance shall constitute a separate offense.

§ 6-812. Non-Waiverability.

Any attempted waiver of this Ordinance by the lessee or buyer, other than the provisions of Section 6-804 concerning the right to obtain an independent inspection, shall be void and unenforceable. Similarly, the passage of time during the term of a lease or so long as the lessee lawfully occupies the property, shall not constitute a waiver of this Chapter.

§ 6-813. Severability.

Should any clause, sentence, paragraph or part of this Chapter, or the application thereof to any person or circumstance, be for any reason adjudged by a court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this Chapter or the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered.

Notes

114 Added, Bill No. 992 (approved June 21, 1995), 1995 Ordinances, p. 759. Section 2 of the Ordinance provides: "This Ordinance shall take effect on October 28, 1995. All rules,

regulations and written materials shall be available ninety (90) days prior to the effective date."

115 Amended, Bill No. 130723 (approved January 20, 2014).

116 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

117 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

118 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

119 Caption and section amended, Bill No. 100011-A (approved December 21, 2011), effective
December 21, 2012.

120 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

121 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.