NAR Issue Summaries

Environment / Lead Paint

NAR Committee:

Land Use, Property Rights and Environment Committee

What is the fundamental issue?

Under the Residential Lead-Based Paint Hazard Reduction Act, Realtors are required to facilitate a process by which the presence of lead paint in pre-1978 homes is disclosed by the owner to a prospective buyer in a timely manner. The purpose of this regulation is to reduce exposure to lead paint and improve public health.

The same Act directed the U.S. Environmental Protection Agency (EPA) toregulate renovation, repair and painting (RRP) activities in pre-1978 residential properties, which has been completed.

I am a real estate professional. What does this mean for my business?

The law requires real estate professionals to obtain and disclose information on known lead paint hazards in homes. Realtors are also required to have both buyer and seller review an informational pamphlet on the hazards of lead paint, date and initial a disclosure form, keep hard copies of this information for three years, be subject to periodic, unannounced searches by EPA officials and be fined if non-compliance is discovered. All of these requirements have legal, educational and regulatory costs associated with them.

For the Lead Paint Renovation, Repair and Painting program, residential property managers must spend more on staff who now must be EPA certified in lead-safe renovation procedures. The Agency may impose the same regulatory burden on commercial building owners and managers if data show their RRP activities pose a lead hazard to children.

In addition, contractors must be certified and comply with the lead-safe renovation procedures, which drives up the cost of these renovation activities, and ultimately the cost of owning and managing both residential and commercial properties.

NAR Policy:

NAR opposes mandatory testing for lead-based paint tied to the transaction process and supports property condition disclosure and education.

Owners of office buildings, factories or other properties where children don't live or play should be allowed to opt out of mandatory testing for lead-based paint when repairs and renovations are undertaken. Unlike residential housing, children do not spend significant time in these properties. Forcing commercial properties to hire more specialized and expensive contractors to provide routine repairs and maintenance without any public health benefit is unnecessary.

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To learn more, visit: www.nar.realtor/lead-based-paint.

Opposition Arguments:

Opponents of NAR's policyassert that more regulations are necessary to protect homeowners from lead paint hazards. The Disclosure Rule is focused on known lead paint hazards in the home and also allows the prospective buyer to choose whether or not to move forward with an inspection. Likewise, the renovation, repair and painting program is designed to protect pregnant women and children from lead paint poisoning caused by property renovations, including those present in commercial properties. While both groups may spend less time in commercial properties, any risks that do exist should be minimized, especially given the significant health risk posed bylead hazards.

Legislative/Regulatory Status/Outlook

On April 22, 2010, the EPA issued the residential RRP regulations to certify renovators/remodelers in lead-safe procedures. NAR has on-going concerns with this rule, including:

- Elimination of the "opt-out" provision that previously exempted low-risk property owners from the rule –- for example, elderly and childless couples.
- EPA's inability to certify a Lead Paint Test Kit which would enable RRP contractors to quickly and inexpensively exclude any home that does not have lead paint.

Currently, the EPA is considering extending the residential regulations to all commercial buildings. Originally, the Agency had suggested basing its determination solely on residential RRP data. But as part of a broad coalition, NAR submitted extensive comments questioning the scientific basis for such an approach, and Congress held oversight hearings. The Agency has since reversed course and issued a request for hazard determination data.

At this time, EPA has not provided a time frame for moving forward with a hazard determination or proposed rule for lead paint RRP activities in commercial buildings.

NAR has also provided comprehensive information to REALTORS® on RRP regulatory compliance and will continue to communicate with the EPA on how the residential rule and proposed commercial rule impact REALTORS®, property managers and contractors.

Property Managers and Lead Safe Workplace Requirements

As a result of a recent Environmental Protection Agency action in March 2022, property management companies nationwide are now required to obtain certification and meet lead-safe workplace requirements when performing or offering to perform lead-based paint repairs and renovations for compensation, even when hiring separate renovation firms.

In 2008, the EPA issued the Lead Renovation, Repair, and Painting Rule to minimize lead-based hazards

from renovations, repairs, or painting activities that disturb painted surfaces in homes and child-occupied facilities built before 1978. Property management companies have relied on the Environmental Protection Agencyfor guidance when performing or offering to perform renovations for compensation in properties covered by the rule. For over a decade, two questions - Questions 23002-13650 and 23002-18348 - in the guidance exempted property management companies from certification requirements if none of its employees performed the renovation and provided assurances that the company would not be subject to an enforcement action if a separate certified firm hired by the property management company subsequently violated the rule. However, after studying the property management industry, the EPA withdrew Questions 23002-13650 and 23002-18348.

To avoid costly fines and enforcement actions as a result of lead-based paint renovations or repairs, property management companies should ensure it meets the following requirements:

- Obtain EPA certification (valid for 5 years, apply here) and renew certification at least 90 days before expiration.
- Ensure that all persons performing lead-based paint renovations on behalf of the company are either certified renovators or trained by a certified renovator.
- Assign a certified renovator to each renovation and ensure that they perform all the certified renovator responsibilities.
- Ensure implementation of work practice standards (including pre-renovation education requirements and lead-safe work practices).
- Meet record keeping requirements such as maintaining copies of certified renovator's initial and renewed certificates at work site and for 3 years following each job.

Changes to the Lead-paint Disclosure Form

On April 24, 2024, the EPA finalized revisions to the Buyer/Seller and Landlord/Tenant Lead-Based Paint Disclosure Form. According to the EPA, these changes will help agents and consumers fill out the form correctly and reduce ambiguity and errors, thereby helping agents comply with the rule and reduce their liability. The changes don't alter what information is required of agents or consumers to provide—the forms have been revised to simplify and standardize how the information is conveyed.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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