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Legal Update

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Please Route to:

Inside This Issue

4

**Pre-Renovation
Education Requirements**

5

**General Work Practice
Requirements**

7

Facts about Lead

9

Home Renovations

11

**Wisconsin Case Law:
the Battle over Liability
for LBP Poisoning**

LBP Hotline Q&A

15

Resources

16

**EPA Implementation
Dates Table**

Lead-Based Paint Renovations, Repairs and Painting

According to a report by the President's Task Force on Environmental Health and Safety Risks to Children, approximately 24 million pre-1978 U.S. dwellings were at risk for lead-based paint (LBP) hazards. The federal standards for LBP specify that lead is a hazard when the lead content equals or exceeds a level of 1.0 milligram per centimeter squared or 0.5 percent by weight. Common renovation activities like sanding, cutting and demolition may disturb painted surfaces and can create hazardous lead dust and chips by disturbing LBP, which can be harmful to adults and children.

To protect against the risk of LBP poisoning, the U.S. Environmental Protection Agency issued a Lead-Based Paint Renovation, Repair and Painting Program (RRP) rule on March 31, 2008, requiring contractors, painters and other workers to use lead-safe practices, provide educational pamphlets to property owners and occupants, contain the work area, minimize lead dust and follow thorough clean-up protocol.

Beginning in December 2008, the RRP rule will require that contractors conducting renovation, repair and painting projects that disturb LBP provide the *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools (Renovate Right)* pamphlet to owners and occupants of housing and child care facilities built before 1978 and to parents and guardians of children under age 6 that attend those child care facilities.

Beginning in April 2010, contractors

conducting renovation, repair and painting projects that disturb LBP in homes, child care facilities and schools built before 1978 must be EPA-certified and must follow specific work practices to prevent lead contamination.

This *Update* overviews the RRP rule and discusses some of the specific rules that renovators will have to follow over the upcoming months and years. Basic facts about the dangers and incidence of LBP and key LBP definitions are included in the discussion. The *Update* concludes with a brief look at recent LBP litigation in Wisconsin, Hotline questions concerning LBP issues and the EPA's implementation table for the RRP rule requirements.

LBP Renovation, Repair and Painting Program Overview

The RRP program is a federal regulatory program affecting contractors, property managers, painters and others who disturb painted surfaces. The rule requires workers to provide pre-renovation educational materials to property owners and occupants and to be trained to use lead-safe work practices, and dictates that renovation firms be EPA-certified beginning April 22, 2010.

The RRP rule applies to residential houses, apartments and child-occupied facilities such as schools and day care centers built before 1978. The rule covers residential, public or commercial buildings where children under age 6 are regularly

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present as well as those buildings where an expectant mother resides.

The pre-renovation education requirements are effective December 22, 2008. Contractors, property managers and others who perform renovations for compensation in residential houses, apartments and child-occupied facilities built before 1978 are required to distribute a lead pamphlet before starting renovation work. In 1998, the EPA issued a Pre-Renovation Education Rule requiring contractors and workers to distribute the EPA's lead information pamphlet, *Protect Your Family from Lead in Your Home*. The EPA's 2008 RRP rule updates sections of the 1998 Pre-Renovation Education Rule, including the requirement that contractors disseminate the March 2008 *Renovate Right* pamphlet instead of the *Protect Your Family from Lead in Your Home* pamphlet beginning December 22, 2008 (although either lead pamphlet can be used up until then).

Effective April 22, 2010, renovation firms are required to be certified, have at least one certified renovator on staff who can train their other employees in the use of lead-safe work practices and follow lead-safe work practices that minimize occupants' exposure to lead hazards.

Renovation is broadly defined to include many activities not normally considered to be renovations. "Renovation" is defined as any activity that disturbs painted surfaces and includes most repair, remodeling and maintenance activities, including painting and window replacement.

Who Must Follow the 2008 RRP Rule Requirements?

In general, anyone who is paid to perform work that disturbs paint in housing and child-occupied facilities built before 1978 is subject to the RRP rule. This may include, but is not limited to:

- Remodelers of single- and multi-family housing.
- Landlords, property managers and maintenance workers for residential buildings and dwellings.
- General contractors.
- Special trade contractors including painters, plumbers, carpenters and electricians.
- Window replacement workers.

These contractors, managers and workers are collectively referred to in this *Update* as "renovators."

What Housing or Activities Are Excluded and Not Subject to the Rule?

- Housing built in 1978 or later.
- Housing for elderly or disabled persons, unless children under 6 reside or are expected to reside there.
- Zero-bedroom dwellings (studio apartments, dormitories, etc.).
- Housing or components declared lead-free by a certified inspector or risk assessor.
- Minor repair and maintenance activities that disturb 6 square feet or less of paint per room inside, or 20 square feet or less on the exterior of a home or building. Note: minor repair and maintenance activities do not include window replacement and projects involving demolition or prohibited practices.

What Does the Program Require Renovators To Do Now?

The pre-renovation education requirements are effective December 22, 2008.

- In housing, renovators must:
 - Distribute the EPA's *Renovate Right* pamphlet to the owner and occupants before the renovation starts.
- In a child-occupied facility, renovators must:

- Distribute the *Renovate Right* pamphlet to the owner of the building or an adult representative of the child-occupied facility before the renovation starts.
- For work in common areas of multi-family housing or child-occupied facilities, renovators must:
 - Distribute renovation notices to tenants or parents/guardians of the children attending the child-occupied facility, or
 - Post informational signs about the renovation or repair job. Informational signs must be posted where they will be seen; describe the nature, locations and dates of the renovation; and be accompanied by the *Renovate Right* pamphlet or by information about how parents and guardians can get a free copy.
- Obtain confirmation of receipt of the *Renovate Right* pamphlet from the owner, adult representative or occupants, as applicable, or a certificate of mailing from the post office.
- Retain records for three years.

Pre-renovation education requirements do not apply to emergency renovations such as activities performed in response to a resident child with an elevated blood-lead level. The requirements for delivery of the pamphlet are further discussed on Page 4 of this *Update*.

Training, Certification and Work Practice Requirements

The training, certification and work practice requirements are mandatory beginning April 22, 2010.

- Firms must be certified.
- Renovators must be trained.
- Lead-safe work practices must be followed. Examples of these practices include:
 - Work-area containment to prevent dust and debris from leaving the

work area.

- Prohibition of certain work practices like open-flame burning and the use of power tools without HEPA exhaust control.
- Thorough clean up followed by a verification procedure to minimize exposure to LBP hazards.

The training, certification, and work practice requirements do not apply to cases in which the firm obtains a signed statement from the owner that the renovation will occur in the owner's residence where no child under age 6 and no pregnant woman resides, that the housing is not a child-occupied facility and that the renovation firm will not be required to use RRP work practices.

How Will a Firm Become Certified?

Beginning in October 2009, firms may apply to the EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to the EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees. To obtain a copy of the "Application for Firms," contact the National Lead Information Center at 1-800-424-LEAD (5323) or visit www.epa.gov/lead/pubs/renovation.htm.

What Are the Responsibilities of a Certified Firm?

Firms performing renovations must ensure that:

1. All individuals performing activities that disturb painted surfaces on behalf of the firm are either certified renovators or have been trained by a certified renovator.
2. A certified renovator is assigned to each renovation and performs all of the certified renovator responsibilities.
3. All renovations performed by the firm

are performed in accordance with the RRP work practice standards.

4. The RRP pre-renovation education requirements are performed.
5. The RRP record keeping requirements are met.

How Will a Renovator Become Certified?

To become a certified renovator an individual must successfully complete an eight-hour initial renovator training course offered by an accredited training provider (training providers are accredited by the EPA or by an authorized state or tribal program). The course completion certificate serves as proof of certification. Training providers can apply for accreditation for renovator and dust sampling technician training beginning in April 2009. Once accredited, trainers can begin to provide certification training.

Are There Streamlined Requirements for Contractors with Previous Lead Training?

Yes. Individuals who have successfully completed an accredited lead abatement worker or supervisor course, or individuals who have successfully completed an EPA, Department of Housing and Urban Development or EPA/HUD model renovation training course, need only take a four-hour refresher renovator training course instead of the eight-hour initial renovator training course to become certified.

What Are the Responsibilities of a Certified Renovator?

Certified renovators are responsible for ensuring overall compliance with the RRP requirements for lead-safe work practices at renovations they are assigned. A certified renovator must:

1. Use a test kit acceptable to the EPA, when requested by the party contracting for renovation services, to determine whether components to be affected by the renovation contain

- LBP (the EPA will announce which test kits are acceptable prior to April 2010. Visit the EPA Web site at www.epa.gov/lead).
2. Provide on-the-job training to workers for the work practices they will be using while performing their assigned tasks.
 3. Be physically present at the work site when warning signs are posted, while the work-area containment is being established and while the work-area cleaning is performed.
 4. Regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.
 5. Be available, either on-site or by telephone, at all times renovations are being conducted.
 6. Perform project cleaning verification.
 7. Have copies of their initial course completion certificate and their most recent refresher course completion certificate with them at the work site.
 8. Prepare required records.

How Long Will Firm and Renovator Certifications Last?

To maintain their certification, renovators and firms must be re-certified by the EPA every five years. A firm must submit to the EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees. Renovators must successfully complete a refresher training course provided by an accredited training provider.

What Are the Record Keeping Requirements?

All documents must be retained for three years following the completion of a renovation. Records that must be retained include:

1. Reports certifying that LBP is not present.

2. Records relating to the distribution of the *Renovate Right* pamphlet.
3. Any signed and dated statements received from owner/occupants documenting that the requirements do not apply (i.e., there is no child under age 6 and no pregnant woman who resides at the home, and it is not a child-occupied facility).
4. Documentation of compliance with the requirements of the RRP (the EPA has prepared a sample form that is available at www.epa.gov/lead/pubs/samplechecklist.pdf).

RRP Exceptions

The RRP requirements do not apply if the job does not disturb painted surfaces in a home or child-occupied facility built before 1978, or if:

- The work is a lead abatement project.
- The work is only minor repairs or maintenance that disturbs less than 6 square feet of painted surface per room for interior activities or less than 20 square feet of painted surface for exterior activities.
- A certified inspector or risk assessor has determined that the housing is LBP-free or the components being renovated are free of LBP as determined by a certified renovator using an EPA-recognized test kit.
- The housing is a zero-bedroom dwelling (studio apartments, dorm rooms, etc.)
- The housing is for the elderly or disabled and no children under the age of 6 years reside there or are expected to reside there.

The RRP requirements do apply if the job disturbs painted surfaces in a home or child-occupied facility built before 1978 if the work includes window replacement, demolition or prohibited practices.

Emergency Renovations

Emergency renovations are activities

that were not planned and if not immediately attended to will create a safety hazard or threaten significant damage to equipment or other property, or interim controls performed in response to an elevated blood level in a resident child. The RRP pre-renovation education requirements do not apply, but some renovation training and work practice requirements are applicable.

Pre-Renovation Education Requirements

The requirements for distributing *Renovate Right* pamphlets and other pre-renovation educational materials to owners or occupants of the property where the work will be done vary depending upon the property type.

A. Owner-Occupied Dwelling Units

1. Deliver the *Renovate Right* pamphlet to the owner before the renovation work begins and obtain confirmation that the owner received the lead pamphlet, or
2. Mail the *Renovate Right* pamphlet to the owner seven days before the renovation work begins and obtain a certificate of mailing from the post office.

B. Tenant-Occupied Dwelling Units

1. Provide the *Renovate Right* pamphlet to the owner, as above.
2. Provide the *Renovate Right* pamphlet to the tenant:
 - a. Deliver the *Renovate Right* pamphlet to the dwelling unit before the renovation work begins and obtain confirmation that the tenant received the *Renovate Right* pamphlet or prepare a self-certification of delivery, or
 - b. Mail the *Renovate Right* pamphlet to the tenant at least seven days before the renovation work begins and obtain a certificate of mailing from the post office.

C. Common Areas of Multi-Family Housing

1. Provide the *Renovate Right* pamphlet to the owner, as above.
2. Notify tenants and make the *Renovate Right* pamphlet available or post signs describing the renovation, including the pamphlet or information about how to review a copy.
3. Maintain written records documenting the notifications procedures.
4. Provide a supplemental renovation notice if changes occur in the location, timing or scope of the renovation work.

D. Child-Occupied Facilities

1. Provide the *Renovate Right* pamphlet to the owner in the same manner as if the property were an owner-occupied dwelling unit. However, if the child-occupied facility is not the building owner, provide the *Renovate Right* pamphlet by either obtaining a written acknowledgement that an adult representative received the pamphlet, certifying in writing that a pamphlet was delivered or obtaining a certificate of mailing at least seven days before the renovation.
2. Provide the parents or guardians of children using the child-occupied facility with information by either:
 - a. Mailing or hand-delivering the *Renovate Right* pamphlet and renovation information to each parent or guardian, or
 - b. Posting signs describing the renovation. The signs must include the pamphlet or information on how to review a copy.

E. Owner Exception

The training and work practice requirements do not apply if the firm has obtained a signed statement from the owner that:

1. The renovation will occur in the owner's residence,
2. No child under age 6 resides there,

3. No woman who is pregnant resides there,
4. The housing is not a child-occupied facility and
5. The owner acknowledges that the renovation firm will not be required to use the work practices.

General Work Practice Requirements

- A. Renovations must be performed by certified firms using certified renovators.
- B. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs should be in the language of the occupants.
- C. Prior to the renovation, the firm must contain the work area so that no dust or debris leaves the work area while the renovation is being performed.
- D. Work practices listed below are prohibited during a renovation:
 1. Open-flame burning or torching of LBP,
 2. Use of machines that remove LBP through high-speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting or sandblasting, unless such machines are used with HEPA exhaust control, and
 3. Operating a heat gun on LBP at temperatures of 1,100 degrees Fahrenheit or higher.
- E. Waste from renovations:
 1. Must be contained to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal.
 2. Must be stored after it has been collected, at the conclusion of each work day and the renovation project, to prevent access to and the release of dust and debris.

3. Must be contained as it is transported from renovation activities to prevent the release of dust and debris.

Emergency projects are exempt from the warning sign, containment, waste handling, training and certification requirements to the extent necessary to respond to the emergency. Emergency renovations are NOT exempt from the cleaning and cleaning verification requirements.

Work Practice Requirements Specific to Interior Renovations

The firm must:

- A. Remove all objects from the work area or cover them with plastic sheeting with all seams and edges sealed.
- B. Close and cover all ducts opening in the work area with taped-down plastic sheeting.
- C. Close windows and doors in the work area. Doors must be covered with plastic sheeting.
- D. Cover the floor surface with taped-down plastic sheeting in the work area a minimum of 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.
- E. Use precautions to ensure that all personnel, tools and other items, including the exteriors of containers of waste, are free of dust and debris when leaving the work area.
- F. Clean the work area until no dust, debris or residue remains after the renovation has been completed. The firm must:
 1. Seal all paint chips and debris in a heavy-duty bag.
 2. Remove and dispose of protective sheeting as waste.
 3. Clean all objects and surfaces in the work area and within 2 feet

of the work area in the following manner:

- a. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.
- b. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum.
- c. Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly using a mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system.

Cleaning verification is required to ensure the work area is adequately cleaned and ready for re-occupancy.

Interior Cleaning Verification

Visual Inspection. A certified renovator must perform a visual inspection to see if all dust, debris and residue appears to have been removed

Re-Cleaning. If dust, debris or residue is present, the area must be re-cleaned and another visual inspection must be performed.

Clearance Testing. Once there is no observable dust, debris or residue present, the certified renovator must check to see if the contract or another federal, state, territorial, tribal or local regulation requires clearance testing. If so, dust clearance samples may need to be collected by a certified inspector, risk assessor or dust sampling technician, and the renovation firm may need to re-clean until the dust clearance samples are below applicable clearance standards.

Floors, Counter Tops and Window Sills

When performing an interior cleaning verification for floors, counter tops and window sills, a certified renovator must wipe all uncarpeted floors, counter tops and windowsills within the work area with a wet disposable cleaning cloth and compare it with the cleaning verification card to see if the cloth is darker. If not, the work area has been adequately cleaned and warning signs may be removed.

If the cloth is darker than the cleaning verification cloth, then the areas that failed must be re-cleaned and then tested again using a new wet disposable cleaning cloth. This procedure is repeated but this time the firm will wait until either the area has dried completely or an hour has passed, whichever is longer. Once dry, wipe that area with a dry disposable cleaning cloth.

For areas greater than 40 square feet, the certified renovator should separate the area into sections and use a new disposable cleaning cloth for each section.

Work Practice Requirements Specific to Exterior Renovations

The firm must:

- A. Close all doors and windows within 20 feet of the renovation.
- B. Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting in a manner that allows workers to pass through while confining dust and debris.
- C. Cover the ground with plastic sheeting or other disposable impermeable material extending a minimum of 10 feet beyond the perimeter or a sufficient distance to collect falling paint debris, whichever is greater.
- D. Take extra precautions (such as vertical containment) to contain the work area in certain situations, such as when work areas are in close proximity to other buildings or windy conditions are present.
- E. Clean the work area until no dust, debris or residue remains after the

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renovation has been completed. The firm must:

1. Seal all paint chips and debris in a heavy-duty bag.
2. Remove and dispose of protective sheeting as waste.
3. Contain waste transported from renovation activities to prevent the release of dust and debris.

Visual Inspection. A certified renovator must perform a visual inspection. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. If there is no dust, debris or residue present, the area has been adequately cleaned. The warning signs may be removed.

Compliance and Violations

The EPA uses a mixture of compliance assistance, compliance incentives and traditional law enforcement to encourage compliance. The EPA knows that small businesses that must comply with complicated new statutes or rules often want to do the right thing, but may lack the requisite knowledge, resources or skills. Compliance assistance information and technical advice helps small businesses to understand and meet their environmental obligations. Compliance incentives, such as the EPA's Small Business Policy, apply to businesses with 100 or fewer employees and encourage persons to voluntarily discover, disclose and correct violations before they are identified by the government (more information about the EPA's Small Business Policy is available at www.epa.gov/compliance/incentives/smallbusiness/index.html). The EPA's enforcement program is aimed at protecting the public by targeting persons or entities who do not comply or cooperate.

The EPA uses a variety of methods to determine whether businesses are complying, including inspecting work

sites, reviewing records and reports, and responding to citizen tips and complaints. The EPA may file an enforcement action against violators seeking penalties of up to \$32,500 per violation, per day. The proposed penalty in a given case will depend on many factors, including the number, length and severity of the violations, the economic benefit obtained by the violator and its ability to pay. The EPA has policies in place to ensure penalties are calculated fairly. These policies are available to the public. Any company charged with a violation has the right to contest the EPA's allegations and proposed penalty before an impartial judge or jury.

EPA FAQs for RRP

Is painting considered renovation if no surface preparation activity occurs?

No. If the surface to be painted is not disturbed by sanding, scraping or other activities that may cause dust, the work is not considered renovation and the EPA's RRP requirements do not apply. However, painting projects that involve surface preparation that disturbs paint, such as sanding and scraping, would be covered.

Do the EPA's RRP rules apply if an individual renovates his or her own home?

The EPA's RRP rules apply only to renovations performed for compensation; therefore, if a person works on his or her own home, the rules do not apply. The EPA encourages homeowners to use lead-safe work practices, nonetheless, in order to protect themselves, their families and the value of their homes.

Is a renovation performed by a landlord or employees of a property management firm considered a compensated renovation under the RRP rules?

Yes. The receipt of rent payments or salaries derived from rent payments is considered compensation under

the RRP rules. Therefore, renovation activities performed by landlords or employees of landlords are covered.

Do renovators have to give out the Renovate Right pamphlet seven days prior to beginning renovation activities?

The seven-day advance delivery requirement applies only when renovators deliver the *Renovate Right* pamphlet by mail; otherwise, renovators may deliver the pamphlet anytime before the renovation begins so long as the renovation begins within 60 days of the date that the pamphlet is delivered. For example, if the renovation is to begin May 30, renovators may deliver the pamphlet in person anytime between April 1 and start of the project on May 30, or they may deliver the pamphlet by mail anytime between April 1 and May 23.

Facts about Lead

FACT: Lead exposure can harm young children and babies even before they are born.

FACT: Even children who seem healthy can have high levels of lead in their bodies.

FACT: People can get lead in their bodies by breathing, inhaling or swallowing lead dust, or by eating soil or paint chips containing lead.

FACT: There are many options for reducing lead hazards. In most cases, LBP that is in good condition is not a hazard.

FACT: Removing LBP improperly by sanding, scraping, burning, brushing or blasting can increase the danger to property occupants.

Health Effects of Lead

Lead is highly toxic. Exposure to it can be dangerous, especially for children who are 6 years old or younger.

Because the body cannot tell the difference between lead and calcium, lead is absorbed into the bones, where

it can have permanent negative consequences. In extreme cases, lead poisoning can be fatal or can cause a coma or convulsions. Lower lead levels can result in kidney problems and can negatively impact cognitive development.

1. Childhood lead poisoning remains a major environmental health problem in the U.S. People can get lead in their bodies if they:
 - a. Put their hands or other objects covered with lead dust in their mouths.
 - b. Eat paint chips or soil that contains lead.
 - c. Breathe in lead dust, especially during renovations that disturb painted surfaces.
2. Lead is more dangerous to children because:
 - a. Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.
 - b. Children's growing bodies absorb more lead.
 - c. Children's brains and nervous systems are more sensitive to the damaging effects of lead.
3. If not detected early, children with high levels of lead in their bodies can suffer from:
 - a. Damage to the brain and nervous system.
 - b. Behavior and learning problems, such as hyperactivity.
 - c. Slowed growth.
 - d. Hearing problems.
 - e. Headaches.
4. Lead is also harmful to adults. Adults can suffer from:
 - a. Reproductive problems (in both men and women).
 - b. High blood pressure and hypertension.

- c. Nerve disorders.
- d. Memory and concentration problems.
- e. Muscle and joint pain.

Wisconsin LBP Statistics

Lead poisoning disproportionately affects lower-income, inner-city populations, according to recent research. In Milwaukee alone, about 19,000 children have become affected by lead poisoning since 1995, according to a city estimate.

As reported in the *Legacy of Lead: Report on Childhood Lead Poisoning in Wisconsin 2008*, online at <http://dhs.wisconsin.gov/lead/LegacyofLead/index.HTM>, virtually all homes built before 1950 have LBP, as do many built since 1950. Paint chips and dust from LBP and varnish form on walls, ceilings and along friction surfaces. They collect on window sills, in window troughs and on floors and stairwells and are available for ingestion by toddlers and small children. This makes early blood lead testing important for children age 1 and 2 years, as recommended by the Center for Disease Control and required by federal Medicaid policy.

Wisconsin is a rust-belt state, with older neighborhoods and old housing built during the industrial boom that started in the mid-1800s. Much of the state's industrial base has since been lost, leaving these older neighborhoods without a viable economic base and subject to disrepair and neglect. Many Wisconsin families with young children live in these neighborhoods in older homes that have LBP hazards. The combination of old housing, poverty and associated socioeconomic factors contributes to a risk of childhood lead poisoning in Wisconsin that is persistently much higher than the national average (CDC Surveillance Data 1996-2006).

Key LBP Definitions

Abatement: A set of activities designed to permanently eliminate lead or lead hazards. The EPA has specific certification and training requirements for abatement professionals. The RRP does not apply to lead abatement work. Abatement does not include renovation, remodeling or other activities done to repair, restore, or redesign a given building – even if such renovation activities incidentally eliminate LBP hazards.

Certificate of Mailing: A written verification from the U.S. Postal Service that a letter or document, such as the *Renovate Right* pamphlet, was mailed to an owner or a tenant. This is less expensive than certified mail, which is also acceptable for meeting the RRP requirements. If using this delivery option, renovators must mail the pamphlet at least seven days prior to the start of renovation.

Certified Inspector or Risk Assessor: An individual who has been trained and is certified by the EPA or an authorized state or Indian Tribe to conduct LBP inspections or risk assessments.

Child-Occupied Facility: This may include, but is not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. The RRP rule defines a “child-occupied facility” as a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least three hours, the combined weekly visits last at least six hours and the combined annual visits last at least 60 hours.

The 40,000 lead-poisoned children were associated with more than 39,000 addresses throughout the state. Since lead poisoning is most often associated with LBP in older properties, the majority of these 39,000 addresses represent environmental LBP hazards for children who live there. Additional houses with LBP hazards are being identified every year. During 2006 alone, 1,282 new addresses were identified as being associated with lead-poisoned children. There likely are many more properties with LBP hazards – and many more lead-poisoned children – that remain to be identified.

During 2006 more than 2,100 children under age 6, or 2.6 percent of children tested, were known to be lead-poisoned. This is more than twice the 2006 national average of 1.2 percent. According to the 2006 data published by the CDC, Wisconsin ranked ninth among all states for the number of lead-poisoned children.

LBP in Homes

In general, the older the home, the more likely it is that the home has LBP. LBP may be found in homes in the city, country or suburbs, in apartments, single-family homes, and both private and public housing. It may be found both inside and outside of the house.

Many homes built before 1978 have LBP. The federal government banned LBP from housing in 1978 and some states stopped its use even earlier. Lead from paint chips, which you can see, and lead dust, which you cannot always see, can be serious hazards. Peeling, chipping, chalking or cracking LBP is a hazard and needs immediate attention. LBP may also be a hazard when found on surfaces that children can chew or that get a lot of wear and tear. These areas include windows and window sills, doors and door frames, stairs, railings and banisters, and porches and fences.

On the other hand, LBP that is in

good condition is usually not a hazard.

Lead can also be found in soil around a home. Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars, and children playing in yards can ingest or inhale lead dust. Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. Household dust can pick up lead from deteriorating LBP or from soil tracked into a home. Lead dust can form when LBP is dry scraped, dry sanded or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep or walk through it.

Other sources of lead in the home may include the drinking water. A home might have plumbing with lead or lead solder. Local health departments or water suppliers may provide information about this problem and appropriate water testing. Lead in water cannot be seen, smelled or tasted, and boiling water will not eliminate lead.

There are other sources of lead that many may fail to recognize. For example, people who work with lead may bring it home on their hands or clothes. Lead may also come from old painted toys and furniture, food and liquids stored in lead crystal or lead-glazed pottery or porcelain, lead smelters or other industries that release lead into the air, hobbies that use lead, such as making pottery or stained glass or refinishing furniture, and folk remedies that contain lead used to treat upset stomachs.

Home Renovations

Beginning in April 2010, federal law will require that contractors performing renovation, repair and painting projects that disturb LBP in homes, child care facilities and schools built before 1978 must be

Key LBP Definitions

Cleaning Verification Card: A card developed and distributed, or otherwise approved, by the EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Common Area: A portion of a building that is generally accessible to all residents or users. Common areas include, but are not limited to: hallways, stairways, laundry rooms, recreational rooms, playgrounds, community centers and fenced areas. The term applies to both interiors and exteriors of buildings. The RRP requirements related to common areas apply only to multi-family housing.

Component: A specific design or structural element or fixture distinguished by its form, function and location. A component can be located inside or outside the dwelling. Interior components include items such as ceilings, crown molding, walls, doors and trim, floors, fireplaces, radiators, shelves, stair treads, windows and trim, built-in cabinets, beams, bathroom vanities, counter tops and air conditioners. Exterior components may include painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, doors and trim, fences, floors, joists, handrails, window sills and sashes, and air conditioners.

Confirmation of Receipt of Renovate Right Pamphlet: A form that is signed by the owner or tenant of the housing confirming that they received a copy of the *Renovate Right* pamphlet before the renovation began.

certified and follow specific work practices to prevent lead contamination. Until that time, the EPA recommends that anyone performing renovation, repair and painting projects that disturb LBP in pre-1978 homes, child care facilities and schools follow lead-safe work practices, including:

1. Contain the work area.
2. Minimize dust.
3. Clean up thoroughly.

When dealing with LBP, it is important to never dry scrape or sand most lead-painted surfaces. It is better to wet scrape areas by misting the surface with water before and during scraping. Dry scraping should be limited to areas that cannot get wet, such as those around electrical outlets. Measures should be taken to control lead dust during work on lead-painted surfaces, including using a wet sponge or a mister to dampen and wipe down surfaces.

Sellers and buyers may decide to scrape peeling, cracking or chipping paint and repaint the surface in order to prepare the house for sale or to decorate a new house that was just purchased. Unfortunately, dry scraping LBP can create serious health hazards, especially for young children. There have been cases where homeowners have unintentionally poisoned their own children by virtue of the lead dust and paint chips generated during home remodeling projects.

Owners and landlords who try to remove LBP hazards from their properties should use state-certified personnel and are required to do so if the work is classified as lead hazard abatement work. Owners can call the Department of Health Services Asbestos and Lead Program office at 608-261-6876 to learn if their project requires certified abatement workers and to obtain listings of certified personnel.

Property owners doing work involving surfaces covered with LBP

must be extremely careful to not create lead hazards when doing maintenance or remodeling work. REALTORS® can help homeowners find out how to safely work with LBP surfaces. Free copies of the following booklets may be obtained from the NLIC by calling 800-424-LEAD or by visiting these Web sites:

- “Lead Paint Safety: A Field Guide for Painting, Home Maintenance and Renovation Work,” at www.epa.gov/lead/pubs/leadsafetybk.pdf;
- “Lead in Your Home: A Parent’s Reference Guide,” at www.epa.gov/lead/pubs/leadrev.pdf; and
- “Reducing Lead Hazards When Remodeling Your Home,” at www.epa.gov/lead/pubs/rpamp.pdf.

REALTORS® can make copies of these publications and the lists of certified lead contractors at <http://dhs.wisconsin.gov/lead/companylist/index.htm> for buyers and sellers. This information may prevent someone from unintentionally turning a remodeling project into a room full of lead dust, and thus avert a tragedy.

When helping parties find professional LBP inspectors and contractors, REALTORS® should avoid recommending or endorsing a particular expert because a “recommendation” may result in liability. REALTORS® should not accompany the inspector through the house because this may imply that the REALTOR® is supervising the inspector. The party should personally pick and directly hire any LBP contractor.

If a REALTOR® is aware that an owner, contractor or other person has dry-scraped or removed LBP without observing lead-safe precautions, that information must be disclosed as a material adverse fact. The creation of lead chips and lead dust is a hazard, the extent of which can only be measured by testing. The parties must have the opportunity to test and protect themselves and their families from any LBP hazards.

Key LBP Definitions

Emergency Renovation: Unplanned renovation activities done in response to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens property with significant damage. Examples include renovation to repair damage from a tree that fell on a house, renovation to repair a burst water pipe in an apartment complex or interim controls performed in response to an elevated blood lead level in a resident child.

Firm: A company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal or local government agency; or a nonprofit organization.

General Contractor: One who contracts for the construction of an entire building or project, rather than for a portion of the work. The general contractor hires subcontractors (e.g. plumbing, electrical, etc.), coordinates all work and is responsible for payment to subcontractors.

Housing for the Elderly: Retirement communities or similar types of housing specifically reserved for households of one or more persons 62 years of age or older at the time the unit is first occupied.

Interim Controls: A set of measures designed to temporarily reduce human exposure or likely exposure to LBP hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of LBP hazards or potential hazards, and the establishment and operation of management and resident education programs.

Wisconsin Case Law: the Battle over Liability for LBP Poisoning

The Wisconsin Supreme Court heard oral arguments on September 10, 2008, in *Godoy v. E.I. du Pont de Nemours*, the most recent lawsuit filed by the family of a child who suffered poisoning when he ate lead paint to reach the Supreme Court level.

A divided 4-2 Court ruled three years ago in *Thomas v. Mallett*, 2005 WI 129 (www.wisbar.org/res/sup/2005/2003ap001528.htm), that the lawsuit, brought by a mildly retarded teenage boy who ate lead paint chips and inhaled lead dust as a toddler against lead paint manufacturers, could move ahead even though the boy did not know which company made the paint that hurt him. The Court said the suit should go to trial largely because of evidence that the companies knew white lead carbonate was toxic yet continued to market it as safe. He ultimately lost in a jury trial.

The teenager had already settled with the landlords of the rental properties built in 1900 and 1905 where the lead exposure occurred. Each house had been cited for LBP violations in the early 1990s, and paint chips from each property were analyzed to show that the houses contained LBP made with white lead carbonate pigment. Steven Thomas received approximately \$324,000 from the landlords' insurance companies.

In *Thomas v. Mallett*, the Court extended the little-used common law "risk contribution" theory to the lead-paint industry, allowing a childhood lead-paint claim to go to trial against lead-paint manufacturers despite the teenager's inability to identify which manufacturers caused his injury. This altered a basic requirement of the liability system that a plaintiff prove that the defendant was at fault and caused his injury before the defendant is found liable. Without having to prove causation, a plaintiff can recover against manufacturers not because of any specific factual link to the plaintiff's injury, but because each contributed to a general risk. The manufacturer must prove

that it did not produce or market lead paint during the relevant time period or in the relevant liability system to find funding sources to address broad public policy problems instead of addressing individual injuries caused by another.

In *Godoy*, a 10-year-old similarly alleged that he suffered lead poisoning by ingesting white lead carbonate contained in the LBP present on intact painted surfaces and paint chips, flakes and dust when he was a toddler living in a Milwaukee apartment. His complaint alleges that E.I. du Pont, the Sherwin-Williams Company and American Cyanamid Co. knew that the white lead carbonate was dangerous when used in paint, and they allegedly lied by failing to disclose the hazardous nature of white lead carbonate and by representing their products as safe. Instead of going after companies for making lead paint, the *Godoy* case goes after the companies who make the white lead carbonate pigment that was in the paint. One issue before the Court is whether a product can be considered defectively designed when the design is inherent in the nature of the product.

An attorney for paint companies E.I. du Pont and Sherwin Williams says lead paint has legitimate uses outside of homes and apartments, and the only way to make it is with lead pigment. She says this lawsuit is akin to going after the manufacturer of a lighter because the lighter produces a flame.

A decision by the Wisconsin Supreme Court in this case could affect more than 30 similar cases pending in Milwaukee County Circuit Court and how the 2005 decision in *Thomas v. Mallett* may be applied in other cases. *Godoy* has also sued his landlords.

LBP Hotline Q&A

The following are questions recently asked of the Hotline regarding LBP issues. Note that these questions primarily pertain to the federal LBP disclosure rule, which applies to sales and leases of target housing.

A listed home built before 1978 has peeling and chipping paint on the interior and exterior. There is no offer yet. What should the listing agent advise the seller to do about

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the paint? Should the seller scrape and repaint the house? Should the seller have an LBP inspection or assessment?

The seller must disclose LBP information on Addendum S or some other LBP disclosure form. The listing agent may give the seller a general overview of LBP issues, including a copy of the EPA brochure, *Protect Your Family From Lead in Your Home*, and a copy of Addendum S to prepare the seller for the completion of the transaction. Although the seller may choose to test for LBP, the seller is not required to do so if the property is not a rental property. If the seller chooses to do any remodeling, repainting or renovating, proper LBP precautions must be followed. The seller may be referred to www.wra.org/LBP, www.epa.gov, www.leadsafeusa.com, a certified LBP contractor or his attorney for further LBP information.

Some financing programs require the sellers or buyers to scrape and repaint. How should that be handled?

When helping parties find professional LBP inspectors and contractors, REALTORS® should avoid recommending or endorsing a particular expert because a “recommendation” may result in liability. Give the party the DHFS list of credentialed LBP contractors (www.dhfs.state.wi.us/dph boh/lead/ContactList/index.htm) to work with. To avoid unintended liability, let the party deal directly with and do the hiring and supervising of the contractor. Real estate agents must recognize that it is not a part of their duties to hire contractors for the parties.

A landlord/client that recently purchased an investment property was informed by a third party that, “the state requires landlord/management company to disclose the presence of lead pipes in the property and provide a ‘lead water pipe brochure’ when renting a property.” Is this correct?

There is nothing specifically written

under state law regarding disclosure of lead pipes. The law does require that sellers disclose the known presence of any LBP hazards, which arguably include lead pipes. If the landlord does not disclose this information and a licensee is involved, then the licensee would need to disclose it as a material adverse fact in writing. However, the EPA brochure, *Protect Your Family From Lead in Your Home*, includes a discussion on lead in the water that includes pipes and solder. Therefore the landlord may consider a combination of the EPA brochure, an LBP disclosure document (if the property was built before 1978) that incorporates the disclosure of the lead pipes or a separate document that discloses the lead pipes along with the EPA brochure.

The 1998 Wisconsin Supreme Court case of *Antwaun A. v. Heritage Mutual Insurance Company* shed some light on the LBP disclosure requirement for landlords. The *Antwaun A.* case mandates testing whenever the landlord of a residential property constructed before 1978 either knows – or, in the use of ordinary care, *should* know – that there is peeling or chipping paint on the rental property. As all REALTORS® know, the federal LBP disclosure law requires all sellers and landlords to disclose all known LBP, including all testing results, whenever a pre-1978 residential rental property is rented or sold. REALTORS® working in rental or sales transactions involving residential rental property built before 1978 will need to treat any observed chipping, peeling or flaking paint as potential material adverse fact, and must disclose the same in writing to the parties if the owner fails to disclose and test the deteriorating paint. The entire case holding and discussion is located at: www.wra.org/Legal/Court_cases/antwaun.asp.

The landlord should consult his private legal counsel regarding the lead pipes disclosure and the potential inclusion

Key LBP Definitions

Lead Pamphlet: Beginning in December 2008, the lead hazard information pamphlet for the purpose of pre-renovation education will be *Renovate Right: Important Lead Hazard Information for Families, Child Care Facilities and Schools* or an EPA-approved alternative pamphlet. Until that time either the *Renovate Right* or an EPA-approved alternative pamphlet may be used for the purpose of pre-renovation education. Renovators should plan ahead to obtain enough copies of the *Renovate Right* pamphlet by December 22, 2008.

Lead-Based Paint (LBP): Paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (1) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under § 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or (2) In the case of any other paint or surface coatings, such other level as may be established by the administrator.

Minor Repair and Maintenance: Activities that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the prohibited work practices is used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

of language in the landlord's LBP disclosure documents. Also, the landlord should check with his own municipality regarding any applicable local laws and disclosures required of landlords.

The agent is working with a buyer as a buyer's agent. Does a FSBO have to submit an Addendum S, if applicable, and a Real Estate Condition Report?

All sellers subject to Chapter 709, whether broker-assisted or FSBO, must complete a Chapter 709 RECR or risk rescission of the offer to purchase. Chapter 709 generally applies to all persons who transfer real estate containing one to four dwelling units, including condominium units, time share property, living quarters in a commercial property, etc. Chapter 709 does not apply to (1) personal representatives, trustees, conservators and other fiduciaries appointed by or subject to supervision by the court, but only if those persons have never occupied the property (note this does not include powers of attorneys); (2) real estate which has not been inhabited, e.g., new construction; and (3) transfers exempt from the real estate transfer fee, e.g., between spouses, foreclosures, probate transfers, etc.

It is recommended that sellers complete an RECR as soon as possible because if a completed RECR is given to the buyer before he or she submits an offer to purchase, there will be no Chapter 709 buyer rescission rights.

As of December 6, 1996, no offers on residential housing built prior to 1978 can be accepted without the LBP disclosure. Note that, when buyer has no information on the subject, the buyer could originate the addendum assuming that the seller has no notice or knowledge of LBP hazards. If this information is incorrect, the seller would need to counter this disclosure and provide any and all documentation in support.

This disclosure requirement is independent of the RECR law. Whereas the seller risks buyer rescission under

Wisconsin law for failure to deliver the RECR, the penalties for non-compliance with the LBP law are federal and apply not only to the seller, but also to the real estate agents involved in the transaction who must ensure compliance.

The property for sale, owned by a 96-year-old woman in a nursing home, is in a trust. Is an LBP addendum required?

With respect to the federal LBP disclosure rule and Addendum S, in cases where a trustee has been given authority to sell target housing by the beneficiaries of the trust, the trustee would have the responsibility to comply with the requirements of this rule. Otherwise, the responsibility would rest with the beneficiaries of the trust.

The broker listed a property last occupied under a life estate by an elderly woman. The owners of record are her daughter, daughter-in-law and granddaughter, subject to the life estate of the mother. The mother is not living in the home. The broker had all parties sign individual identical agreements. Two of the owners have been instructed by their attorneys not to sign the LBP addendum as the only one that needs to do so is the mother because she last occupied the property.

The LBP addendum indicates the "owner" or "seller of any interest" is required to sign these forms. Are the three actual owners exempt from signing the form? The broker told the two parties that he thought they should sign the form, but did not want them to act contrary to their attorneys' advice.

To ensure compliance with the LBP rules, an agent must inform the seller of his or her obligations under the federal LBP rules and ensure that the seller has performed all activities required under the rules, or personally ensure compliance with the rule requirements. HUD and EPA's commentary to the final rules indicates that this means agents must inform sellers of their obligations,

Key LBP Definitions

Owner: Any person or entity with legal title to housing, including individuals, partnerships, corporations, government agencies, Indian Tribes and nonprofit organizations.

Prohibited Practices: Work practices that are prohibited during a renovation such as open-flame burning or torching of LBP; use of machines that remove LBP through high-speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting or sandblasting, unless such machines are used with HEPA exhaust control; and operating a heat gun on LBP at temperatures above 1,100 degrees Fahrenheit.

Record of Notification: A written statement documenting the steps taken to notify occupants of renovation activities in common areas of multi-family housing.

Renovation: Modification of all or part of any existing structure that disturbs a painted surface, except for some specifically exempted activities (e.g., minor repair and maintenance). This includes removal or modification of painted surfaces, components or structures; surface preparation activities such as sanding, scraping or other activities that may create paint dust; and window replacement. Other examples of renovations include demolition of painted walls or ceilings, replastering, plumbing repairs or improvements, and any other activities that disturb painted surfaces.

Renovation Notice: Notice to tenants of renovations in common areas of multi-family housing that must describe the nature, location and expected timing of renovation activities and explain how the *Renovate Right* pamphlet may be obtained free of charge.

and make sure that the required activities are completed either by the seller or by the agent personally.

If at any time a seller should balk at completing the required LBP disclosure process, the agent working with the seller may wish to remind the seller of the penalties that may be imposed for noncompliance. The federal civil penalties for noncompliance can range up to \$10,000 for each violation. Instead of, or in addition to, the civil penalties, the criminal penalty for those who knowingly or willfully violate the federal LBP disclosure rules can be up to \$10,000 for each violation and imprisonment for up to one year, or both.

The seller may also be sued for three times the damages incurred by a buyer who is injured as a result of the failure to disclose. These damages may include the costs of LBP abatement and the medical costs related to the treatment of LBP poisoning. Any agents involved, however, cannot be held liable for the seller's failure to disclose LBP if the agent has advised the seller of their LBP disclosure obligations and the seller did reveal the LBP information, reports and records to the agent.

The power of attorney (POA) is signing the listing contract for the father and the POA lived in the home as a child. The home was built in 1952 and has had one owner. Given the date, the probability of lead paint is possible but not certain. How should the Addendum S Form be completed?

As of December 6, 1996, no offers on residential housing built prior to 1978 can be accepted without the LBP disclosure. If the seller does not know whether there is lead based paint, the seller completes the form indicating that the seller has no notice or knowledge. Note, this disclosure requirement is independent of the RECR law. Whereas the seller risks buyer rescission under Wisconsin law for failure to deliver the RECR, the penalties for noncompliance with the LBP law are federal and apply not

only to the seller, but also to the real estate agents involved in the transaction who must ensure compliance.

The broker may review *Legal Update 04.05*, "Avoiding Liability When Signing and Making Referrals," online at www.wra.org/LU0405, when working with a power of attorney. The *Update* addresses the how a POA would appropriately sign contract documents.

If an offer is accepted, do both agents in the transaction have to sign the LBP addendum?

In addition to the listing agent signing the LBP addendum, the selling agent also must sign. The federal LBP rules provide that each agent shall ensure compliance with all the requirements of the rules. "Agent" is defined as any party who enters into a contract with a seller for the purpose of selling target housing. This includes persons who enter into a contract with a representative of the seller, and excludes buyers and buyer representatives who receive all compensation from the buyer. This means all listing, selling, cooperative and buyer's agents (unless paid only by the buyer) must abide by the federal LBP rules.

To ensure compliance with the rules, an agent shall inform the seller of his or her obligations under the federal LBP rules, ensure that the seller has performed all activities required under the rules or personally ensure compliance with the rule requirements. HUD and EPA's commentary to the final rules indicates that agents must inform sellers of their obligations and make sure that the required activities are completed either by the seller or by the agent personally. If the other agent is a buyer's agent, this is awkward because they would not normally advise the seller "of his or her obligations under the Federal LBP law." The best reassurance that a cooperating agent has that the sellers have been advised of the law is the signatures of the sellers and the listing agent on Addendum S. Addendum S has a

Key LBP Definitions

Renovator: A person who either performs or directs workers who perform renovation. A certified renovator is a renovator who has successfully completed a renovator course accredited by the EPA or an EPA-authorized state or tribal program. Because the term "renovation" is defined broadly by the RRP, many contractors who are not generally considered "renovators," as that term is commonly used, are considered to be renovators under the RRP and must follow the RRP rule requirements.

Zero-Bedroom Dwelling: Any residential dwelling where the living area is not separated from the sleeping area. This term includes efficiency and studio apartments, dormitory housing and military barracks.

summary of the federal LBP law on the back so sellers who have signed the form and have been given a copy presumptively have notice of the law.

An agent listed a 12-unit building built in 1963. Are an RECR and Addendum S required?

Wis. Stat. Chapter 709 requires sellers of properties that contain one to four dwelling units to provide an RECR, subject to certain exceptions. This disclosure law does not apply to properties containing no dwelling units or more than four units.

However, the listing broker has an obligation under Wis. Admin. Code § RL 24.07(1)(b) to request that the seller provide a written response to the licensee's inquiries with respect to property condition. Wis. Admin. Code § RL 24.07(1)(b) also requires listing brokers to inspect the real estate prior to the execution of the listing contract. If the seller fails to provide a property condition report or does not make complete or accurate disclosure, Wis. Admin. Code § RL 24.07(2) requires brokers to make timely written disclosures of material adverse facts.

Federal LBP law provides that no offers on residential housing built prior to 1978 can be accepted without the LBP disclosure. Addendum S must be used in sales transactions involving target housing. "Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or expects to reside in such housing), and except for any zero-bedroom dwellings. "Housing for the elderly," means retirement communities or similar types of housing designed specifically for households where at least one person is 62 years of age or older at the time of initial occupancy. In cases of both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP rules is lost if children under the age of 6 years reside there or are expected to reside there. "Zero-bedroom dwellings" are residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings. It is not necessary for a purely commercial property unless residential units are included within the property.

See *Legal Update 99.08*, "Addendum O, Addendum S, & LBP Issues," online at www.wra.org/LU9908; *Legal Update 96.07*, "Lead-Based Paint Disclosure Implementation," online at www.wra.org/LU9607; and *Legal Update 96.04*, "Lead-Based Paint Disclosures," online at www.wra.org/LU9604, for further discussion of the LBP law and Addendum S.

An agent has to present an offer. The buyers asked to do an LBP inspection. The sellers disclosed that they are not aware of any LBP. Can the LBP inspection be removed in a counter offer?

A seller may not counter out a buyer's request for the opportunity to conduct an LBP inspection if the subject property is target housing (built

before 1978). However, a seller does not have to agree to allow buyers to void the sale if LBP is found (i.e., inspection authorization is required, but not a contingency with any follow-up procedure). A provision in the offer may be structured so that the buyers may inspect for their own knowledge, but must close whether LBP is present or not unless the buyers can otherwise negotiate the right to void the sale.

Resources

The *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet is available from the EPA:

- In English: www.epa.gov/opptintr/lead/pubs/renovaterightbrochure.pdf
- In Spanish: www.epa.gov/opptintr/lead/pubs/renovaterightbrochure-sp.pdf

Renovation

EPA Renovation, Repair and Painting Web page: www.epa.gov/lead/pubs/renovation.htm

Contractors: *Lead Safety During Renovation* brochure (two pages): www.epa.gov/lead/pubs/contractor_brochure.pdf

RRP fact sheet: www.epa.gov/lead/pubs/rrpfactsheet2008.htm (in English); <http://www.epa.gov/lead/pubs/rrpfactsheet2008sp.htm> (in Spanish)

Text of the RRP rule: www.epa.gov/fedrgstr/EPA-TOX/2008/April/Day-22/t8141.pdf

EPA Model Renovation Training Course: www.epa.gov/lead/pubs/rrmodel.htm

Homeowner Lead-Safe Work Practices

All persons should follow safety precautions and use appropriate methodology when working with LBP. For information about the proper procedures and safety precautions for remodeling, repairs and maintenance work, see

HUD's "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," online at www.epa.gov/lead/pubs/leadsafetybk.pdf.

Also helpful are the EPA's other LBP information booklets, including "Lead in Your Home: A Parent's Reference Guide," available at www.epa.gov/lead/pubs/leadrev.pdf, and "Testing Your Home for Lead in Paint, Dust, and Soil," online at www.epa.gov/lead/pubs/leadtest.pdf.

Additional EPA pamphlets, brochures and posters about lead in paint, dust and soil for sellers, buyers, REALTORS® and others needing information about remodeling and working with painted surfaces in homes: www.epa.gov/lead/pubs/brochure.htm#contractor

NBC *Today Show* video story (approx. four min.) about the dangers of LBP and the precautions needed when renovating older housing: www.msnbc.msn.com/id/21134540/vp/25687293#25687293

Wisconsin LBP Information

Wisconsin Department of Health Services table of available certified disciplines, qualifications and fees: <http://dhs.wisconsin.gov/lead/Cert/LeadHazardReductionTable.pdf>

Wisconsin directory of certified lead companies offering services to the public: <http://dhs.wisconsin.gov/lead/CompanyList/index.htm>

Wisconsin laboratories certified to analyze LBP samples: www.epa.gov/lead/pubs/nllaplist.pdf

Wisconsin Department of Health Services Lead-Safe Wisconsin Web page: <http://dhs.wisconsin.gov/lead/index.htm>

Other LBP Resources

National Lead Information Center: 1-800-424-LEAD (5323) or www.epa.gov/lead.

HUD LBP resources: www.hud.gov/offices/lead/healthyhomes/lead.cfm

EPA Implementation Dates Table

Effective Dates for Renovation, Repair, and Painting Program Rule

June 23, 2008	Unaccredited renovator or dust sampling technician training programs may not advertise or provide training leading to EPA certification
	States, Tribes, and Territories may begin to apply for authorization
	Persons performing renovations for compensation in pre-1978 child-occupied facilities (e.g., child care facilities, kindergarten and pre-kindergarten classrooms) must provide either <i>Protect Your Family</i> or <i>Renovate Right</i> to the owners and occupants before beginning renovations
	<p>Modifications to Pre-renovation Education Rule take effect:</p> <p>(1) Minor repair and maintenance exception changes to < 6 ft² for interiors, 20 ft² for exteriors. To qualify, the project cannot involve the use of high dust generating (“prohibited”) practices or window replacement.</p> <p>(2) Emergency renovations specifically include interim controls performed in response to an elevated blood lead level in a child.</p> <p>(3) Persons performing renovations for compensation in pre-1978 housing may use either <i>Protect Your Family</i> or <i>Renovate Right</i> to comply with the existing requirement to provide a lead hazard information pamphlet to the owners and occupants of target (pre-1978) housing before beginning renovations</p>
Dec. 22, 2008	Persons performing renovations for compensation in target (pre-1978) housing or child-occupied facilities must provide <i>Renovate Right</i> to the owners and occupants before beginning renovations
April 22, 2009	Training providers may begin applying to EPA for accreditation to provide renovator or dust sampling technician training
	Persons seeking certification as renovators or dust sampling technicians may take accredited training as soon as it is available
Oct. 22, 2009	Firms may begin applying to EPA for certification to conduct renovations
April 22, 2010	Renovations in target (pre-1978) housing and child-occupied facilities must be conducted by certified renovation firms, using renovators with accredited training, and following the work practice requirements of the rule

<http://www.epa.gov/opptintr/lead/pubs/effectivedates.htm>

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