

Chapter 9

Lead Poisoning

Legal Tactics: Tenants' Rights in Massachusetts
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Lead Poisoning

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Italicized words are in the Glossary

Lead poisoning is a serious medical problem that each year affects hundreds of young children in Massachusetts because the house or apartment they live in contains dangerous levels of lead paint. Lead is so harmful that even a small amount can poison a child and can cause behavior, learning and physical problems that can require medical treatment or special education assistance. In addition, lead in the body of a pregnant woman can hurt her baby before birth and cause problems with the pregnancy.

This chapter will tell you about:

- The dangers of lead poisoning,
- How you can find out if there is lead in your home or apartment,
- What to do if there is lead, and
- What protections the law provides for you and your children.

What Is Lead Poisoning?

Lead is a poisonous metal that can cause serious and permanent damage to a young child. Childhood lead poisoning is usually caused by a child's swallowing very small lead paint chips or breathing in lead dust. Even low levels of lead in a young child's body can cause IQ deficiencies, reading and learning disabilities, hearing and speech problems, reduced attention span, hyperactivity and behavior problems. High levels of lead can cause permanent damage to a child's brain, central nervous system, and other organs, such as the kidneys. Very high levels of exposure to lead can cause

convulsions, severe mental retardation and even death.

Young children (under the age of six) absorb lead more easily than adults, and the lead can remain undetected in the body for a long time. Lead in the body of a pregnant woman can hurt her baby before birth. It can also cause problems with the pregnancy. The harm done by lead poisoning may never go away and could permanently affect a child's growth and development.

Having Your Child Tested

Most children who develop lead poisoning do not look or act sick. Children who seem perfectly healthy may still be lead poisoned. Damage to the brain and nervous system can be very difficult to detect without a medical exam. A blood test is the only sure way to know if your child has lead poisoning.

1. When Should Children Be Tested?

Every child in Massachusetts must be tested for lead. The first test must be done between the ages of 9 and 12 months. Children must be tested again at ages 2 and 3. If you live in a high-risk neighborhood, your child must also be tested at age 4 (see below for more information on high risk communities). Every child must also have a lead test before they begin kindergarten.¹ If you think you have seen your child with paint chips or paint dust on her hands, face, toys or clothing, or if you have noticed a lot of dust or chipping paint in your

house or apartment, you should have your child tested right away.

2. Method of Testing

The test for lead is very simple and involves taking a small sample of blood from a child. Community health centers, private clinics and doctors can perform this test, although some of them may charge a fee. The cost of the test is usually covered if you have health insurance, including MassHealth. In addition, your local Board of Health may have information about where free blood tests for lead poisoning are available in your community.

A blood lead level tells you how much lead is in your child's body. Most children have lead levels under 10.² Although your child may not look or act sick in any way, a blood lead level of 10 or more is not safe and requires medical attention. If your child's lead level is 10 or more, you should have your home tested for lead as soon as possible. A child under six years old with a **blood lead level of 25 or more is lead poisoned**,³ and your child may need to be hospitalized.

3. Treatment

There are different types of medical treatment for lead poisoning. A doctor may give your child iron pills, or medications or injections to remove the lead from the blood. Removing the lead from the blood is called "chelation." You may want to have your child treated by a doctor with special knowledge and experience in lead poisoning. Follow-up care can last for many months until your child's blood lead levels go down to a safe level. A doctor may also tell you to change your child's diet and add more foods with iron and calcium in them.

During and after treatment, your child will have to have blood tests to see if the blood lead levels have changed. If your child is lead poisoned, the state lead program or your local board of health must inspect your home for lead *as soon as possible* and any lead hazards on

the property will have to be removed or repaired by your landlord.⁴

How Do Children Become Lead Poisoned?

Children under six years of age are most vulnerable to being lead poisoned by coming into contact with the **lead dust and lead paint that is found in most older homes and apartments in Massachusetts**. When old paint cracks or peels, or when lead-painted surfaces rub against each other or are bumped, lead dust or chips are created. Lead dust can be created by opening and closing painted windows and doors; repairing painted cabinets, baseboards, walls, and other painted areas in a home; and just through normal use in a house or apartment. The dust can settle on the floor, windowsills, furniture and other flat surfaces and can get on children's hands, toys and clothing when they come into contact with those surfaces.

Lead dust or small lead chips can get into children's bodies when they put their hands or toys or clothes in their mouths or noses or even when they are just standing near a surface that has lead dust on it and breathing normally. Children can also become lead poisoned by mouthing or licking lead-painted surfaces or eating chips from cracking or peeling lead paint on walls, ceilings, and other surfaces. Even intact lead paint under layers of non-lead paint can still poison children, especially when the paint is disturbed, such as through normal wear and tear or repair work.

The main source of lead exposure for children is lead paint. Lead was often used as an ingredient in popular household paints before 1978. The older the home, the more likely it is to have lead paint. The older the paint, the higher its lead content is likely to be. As lead paint gets older, it poses more of a health hazard because it is more likely to chip,

crack or peel, creating lead dust and debris. As a result, lead paint, which existed in homes when today's adults were young children, poses an even greater threat now. The paint in older houses, built before 1945, may contain so much lead that a child exposed to the dust or chips from that paint could become seriously poisoned in a very short time.

Lead from chipping and peeling paint can also contaminate the soil around a building where a child may play and it can sometimes be found in drinking water, as well. Less common sources of lead exposure include ceramic dishes, brass containers, foreign or antique tea kettles (like samovars), stained glass, large batteries, bullets, fishing sinkers, and folk medicines or cosmetics from other countries. For information about consumer products being recalled because of unsafe levels of lead, go to the Centers for Disease Control and Prevention website at: www.cdc.gov/nceh/lead/Recalls/.

Lead poisoning crosses all racial, geographic, and economic lines, as lead paint can be found in almost every home built before 1978. Although poor maintenance and cleaning habits can increase the risk of a child becoming lead poisoned, good maintenance and cleaning habits alone will not completely protect a child. Lead dust cannot be fully removed by normal household cleaning. In fact, using a vacuum cleaner or a broom to clean up lead paint chips or dust can spread lead dust into the air and over a wider area, creating a very dangerous situation for a young child. Lead dust is also created by normal activities such as opening and closing windows and doors. Even well-supervised children can become lead poisoned, as poisoning frequently occurs when children engage in the perfectly normal behavior of putting their hands, toys, and other objects into their mouths.

1. High-Risk Communities for Lead Poisoning

As of June 2006, the Massachusetts Department of Public Health, Childhood Lead Poisoning

Prevention Program (CLPPP) considered the following communities to be high risk for childhood lead poisoning: Boston, Brockton, Chelsea, Fall River, Fitchburg, Haverhill, Holyoke, Lawrence, Lowell, Lynn, New Bedford, Springfield, Taunton, and Worcester.

In addition to tests at the age of nine months, two years, and three years, children living in these communities should be tested again at four years of age.⁵ For further information on high-risk communities, call the Childhood Lead Poisoning Prevention Program at 800-532-9571.

Your Right to Be Protected from Lead Poisoning

1. The Massachusetts Lead Law

The Massachusetts Lead Poisoning Prevention Act (the "Lead Law") requires a property owner to remove or cover all lead paint hazards in homes built before 1978 where any children under six live.⁶ Whenever a child under six years of age comes to live in a rental property, the property owner has a responsibility to discover whether there is any lead paint on the property and to remove or properly cover any lead paint hazards (delead) to protect the young children living there.

Lead paint hazards include:

- Surfaces that have cracked, chipped, peeling, or otherwise loose lead paint on them;
- Intact lead paint on windows, doors, baseboards, other moveable or impact surfaces, and painted portions of walls that are five feet or less from the floor; and
- Other painted surfaces that are readily accessible to children.⁷

The Lead Law covers all owners of all residential rental property, including public and subsidized housing, as well as owners living in their own single or multi-family home. If the landlord fails to correct dangerous lead conditions in a timely fashion, she can be held legally responsible for any injuries that are caused by her failure to carry out her duties to remove those lead paint hazards.⁸

2. Your Right to Know about Lead Hazards before Renting

Before finalizing any rental agreement concerning a home or apartment built before 1978, a landlord is required to provide a prospective tenant with information about possible lead hazards in the property, even if the tenant does not have any children.⁹ The landlord must give you all the information that she has about the presence of any **known** lead paint on the property and must give you the following papers before you agree to rent the apartment or sign any rental agreement:

- The Tenant Lead Law Notification and Certification Form (as required by CLPPP, see **Form 1**);¹⁰
- A copy of the most recent lead inspection report (if a lead inspection has ever been done on the property); and
- A copy of any Letter of Compliance or Letter of Interim Control (if any deleading work has been done on the property).

3. Lead Law Notification Form

The CLPPP Tenant Lead Law Notification and Certification Form provides tenants with information about the dangers of lead poisoning, methods to combat or reduce the risks of lead poisoning, the tenant's rights with regard to having lead hazards removed from the property, the landlord's responsibilities concerning deleading the property, and government resources to learn more about lead poisoning.

The property owner and the new tenant each must sign two copies of the Tenant Lead Law Notification and Certification Form, and the property owner must give the tenant one of the signed copies to keep. This form is for compliance with both Massachusetts and federal lead notification requirements.

In addition, the property owner is required to tell the tenant any information or knowledge that she has concerning the existence of lead on the property. If asked about lead paint, the landlord may not make false statements or misrepresentations or tell half-truths.¹¹ If the landlord does not comply with all of these disclosure requirements, she can be held *liable* for all *damages* caused by her failure to give this information, fined up to \$1,000,¹² and may be liable for engaging in an unfair and deceptive act under the Massachusetts Consumer Protection Act.¹³

You may be able to find the lead inspection history of a property you want to rent by going to CLPPP's online database for lead-inspected homes at: webapps.ehs.state.ma.us/Leadsafehomes/default.aspx. By entering a street name and number, you may be able to find out whether a property has ever been inspected for lead, has had any lead hazards, or has a letter of compliance. If you cannot find the property but believe there has been an inspection, you can call the CLPPP at 800-532-9571.

4. Real Estate Agents

A prospective tenant should ask the real estate agent (if one is involved in renting the property) about the existence of lead on the property. If asked, the real estate agent is required to tell the tenant any information that she actually has concerning the existence of lead on the property. If a real estate agent fails to tell a tenant about known lead hazards on the property, she may be liable for engaging in an unfair or deceptive act in violation of the Massachusetts Consumer Protection Act.¹⁴

5. Additional Protections under Federal Law

In addition to Massachusetts state laws, federal law requires that property owners and real estate agents renting private housing, public housing,¹⁵ housing receiving federal assistance, or federally owned housing built before 1978 must:

- a. Tell prospective tenants about all known lead-based paint in the property and any available reports on lead in the housing;
- b. Give tenants a government pamphlet entitled *Protect Your Family from Lead in Your Home* (for a copy of this pamphlet in different languages, go to the Environmental Protection Agency's website at: www.epa.gov/lead/pubs/leadprot.htm);
- c. Include certain warning language in the lease as well as in signed statements from all parties verifying that all notification requirements were completed; and
- d. Retain signed acknowledgments for three years, as proof of compliance.

A property owner or real estate agent who fails to give the proper information to a tenant can be sued for triple the amount of *damages* caused by the failure to provide that information. In addition, they may be subject to civil and criminal penalties.¹⁶

Discrimination Prohibited

A property owner or real estate agent cannot get around the legal requirements to disclose information about known lead hazards simply by refusing to rent to families with young children. They also cannot refuse to renew the lease of a pregnant woman or a family with young children just because a property may contain lead hazards. A property owner cannot refuse to rent to you simply because she does not want to spend the money to delead her property. Any of these acts is a violation of the Lead Law, the Consumer Protection Act, and various Massachusetts anti-discrimination statutes that can have serious penalties for a property owner or real estate agent.¹⁷ If you suspect that a landlord is not renting to you because you have children and the property might contain lead paint, contact the Massachusetts Commission Against Discrimination (MCAD) or your local Fair Housing Commission. Also see **Chapter 7: Discrimination** for further information about how to deal with illegal discrimination.

Getting Your Home Inspected for Lead Paint Hazards

1. Whom to Contact

If you are pregnant or have a child under six years of age, you should arrange to have your home tested for the presence of lead paint as soon as possible. You can do this by asking your landlord to have a licensed lead inspector do a "lead determination" or a full lead inspection of your home.¹⁸ If the landlord refuses to have a lead inspection done, you can do some tests for lead yourself by using a home lead testing kit, which is available in most hardware stores. If you find any lead, you should immediately notify your landlord and either your local Board of Health or the CLPPP in writing and ask them to take care of the situation before your child gets poisoned.

Tenants with children under age six or who are pregnant can also obtain a **free lead inspection** by calling the local Lead Poisoning Prevention Program or Board of Health.¹⁹ If this service is not available in your community, you can call CLPPP at 800-532-9571 to arrange for an inspection. You can also hire a private licensed lead inspector to inspect your apartment, and, if illegal levels of lead are found, you can get back the cost of the inspection from your landlord. All lead inspectors **must** be licensed by CLPPP;²⁰ there is a list of licensed inspectors and deleders on the CLPPP website at: www.mass.gov/dph/clppp.

The presence of lead paint hazards in an apartment where a child under six is living is a violation of the state Sanitary Code and is considered an emergency matter which your landlord must address immediately.²¹ If you have a child under six living with you, you are entitled to receive a lead inspection within five days of making a request for one.²² You should be persistent in asking your local Lead Poisoning Prevention Program or Board of Health for a lead inspection as soon as possible. If you run into problems with your local town or city agency in getting a lead inspection done, call CLPPP immediately.

2. How the Inspection Works

Try to be present when the licensed lead inspector comes to your apartment to conduct an inspection so that you can point out areas that you think might have lead paint. Also, ask any questions that you have and get an explanation of what the inspector finds. The lead inspector may use several different methods to test different areas. The inspector must test all the painted surfaces in your apartment, in the common areas (like hallways, staircases, basement, entranceway), and on the outside of the building that are accessible to children (front stairs, porches, windows, etc.).²³

The inspector will then fill out a report that clearly identifies where there is lead paint, where

there is loose, cracked, or peeling paint, and whether or not a surface tested positive for lead. A full lead inspection should take 3-4 hours to complete. The inspector must give you a copy of the completed report, send a copy to CLPPP or the local Board of Health, and send a copy to the property owner, who must distribute it to all occupants of the building.²⁴

If lead paint is found in your apartment, immediately notify your landlord in writing that you want the lead hazards removed. Your own written notice to the landlord is important to do (in addition to the inspector's notification) to protect yourself in case the landlord tries to evict you. Also immediately contact your local Lead Poisoning Prevention Program, Board of Health, or CLPPP to inform them of the results of the inspection. Your local Lead Poisoning Prevention Program, Board of Health, or CLPPP (whichever did the inspection) is required to issue an Order to Correct Violations to the landlord when a lead inspector has identified lead violations in a home or apartment in which a child under six years of age lives or in which a child under six years of age who is lead poisoned has lived within the last 12 months.²⁵ These agencies have the legal power to make the landlord correct any dangerous lead hazards in your apartment in a timely manner by fining the landlord or even bringing a criminal complaint against her in court if she does not comply with the Order.²⁶

Getting Your Home Deleded

1. What Must Be Deleded

Deleading is the work that involves removing or covering the lead hazards in your apartment. Not all lead paint must be deleded. For instance, the paint on a flat wall does not have to be deleded, but all the paint on the wall must be made intact; it cannot be cracked, chipped, or peeling.

The following surfaces **must** be delead, even if the paint on them is intact:

- Surfaces below five feet that can be mouthed by a child. These could include (but are not limited to) wall corners, doors, stairs, railings, windows, baseboards, and chair rails; and
- Parts of windows (with sills below five feet) that move or touch moving parts, including window sashes, wells, and sills.²⁷

Deleading also includes such things as:

- Replacing windows, doors, cabinets and woodwork;
- Scraping or covering old paint;
- Repainting with non-lead-based paint after removal of lead-based paint; and
- Encapsulation with approved materials.

An encapsulant is a liquid coating product that will act as a long-lasting and resilient covering over lead paint.²⁸ Regular paint is **not** an encapsulant and cannot be used to cover or paint over old lead paint.²⁹ Encapsulant paint must say that it is a lead paint encapsulant on the label.

The lead hazards in your apartment or common areas of the building that must be made safe will be listed on the lead inspection report from the licensed lead inspector or the licensed deleader hired by the landlord. The landlord is required to give you and other tenants a copy of that report before she begins any deleading work anywhere in the building.³⁰

2. Required Deleading Process

Once lead hazards have been identified, the property owner must remove or cover them. A landlord has two choices as to how to do this:³¹

1. She can have all lead hazards removed or covered. The owner must first hire a licensed lead inspector who will test the home for lead and record all lead hazards. After the work to be done is approved by the agency that issued the order to delead and properly completed and the building passes a re-inspection by a licensed lead inspector, the owner will receive a Letter of Full Compliance from the licensed lead inspector.³² This letter states that the apartment and all common areas have been properly delead and are now in compliance with the requirements of the lead law and the Sanitary Code.
2. She can have only urgent lead hazards corrected, while controlling the remaining hazards. This temporary method is called "interim control." The owner must first hire a licensed risk assessor, who will explain what work needs to be done for interim control.³³ After the work is approved and properly completed and the building passes a re-inspection by a licensed lead inspector, the owner will receive a Letter of Interim Control. She will then have up to two years before she must have the remaining lead hazards removed or covered in order to receive a Letter of Full Compliance.³⁴

Surfaces from which lead paint or other coatings have been removed must be repainted in order to comply with the state Sanitary Code.³⁵ Delead surfaces can be repainted **only after** the surfaces have been reinspected while bare and approved by a licensed lead inspector. You should notify the landlord in writing if the required repainting is not done after all of the deleading work has been completed and approved. If the landlord does not respond, you should call the agency that issued the original order to delead.

3. Who Does the Deleading

A property owner cannot do any deleading work unless:

- The home has been fully inspected by a licensed lead inspector;
- The landlord or his agent has been specifically trained to do **low-risk** (removing doors and cabinet doors from hinges, putting up vinyl siding, covering painted surfaces, capping baseboards, applying encapsulants) or **moderate-risk** (removing windows, woodwork, and other surfaces, and repairing or repainting small amounts of lead paint) deleading work;
- The owner or agent has received an authorization number from CLPPP to do low-risk or moderate-risk deleading work; and
- The owner or agent has notified all parties in writing (including all occupants of the building) at least ten days in advance of when the deleading work will begin and approximately how long the work will take.

All **high-risk deleading work** (scraping paint, demolition, using chemical paint strippers, making large amounts of loose lead paint intact) must be done by a trained and **licensed deleader**. There is a list of licensed deleading contractors on the CLPPP website at: www.mass.gov/dph/clppp, or you can call CLPPP at 800-532-9571.

It is very important to remember that deleading a property does not mean that all lead has been removed. The law requires only that a landlord remove, repair, or cover cracked, chipped, peeling, or loose lead paint and that he remove or cover intact lead paint on surfaces that are easily accessible to young children.³⁶ But even after deleading has been completed, intact paint will, at some point, begin to chip, crack, and peel (especially in older properties), creating dangerous conditions for young children once again. If this happens, you should **immediately**

notify your landlord, CLPPP, and your local Board of Health, in writing, and ask that your property be re-inspected and that the dangerous conditions be repaired.

If you think that your landlord is having deleading work done by unlicensed or untrained workers, you should immediately report this to your local Lead Poisoning Prevention Program, Board of Health, or CLPPP, which can take action against the landlord. For more information about what work may be done by a property owner herself or her agent and what work must be done by a licensed deleader or a "lead-safe" renovator (which is someone who is licensed to do only some limited types of deleading work), call CLPPP at 800-532-9571.

Depending on a number of different factors, including whether or not your child has been lead poisoned, what lead hazards are found, what deleading work is required, and whether or not the landlord needs financial assistance to complete the required deleading work, **the landlord must complete all deleading work within 60-120 days** after receiving an Order to Correct Violations from CLPPP or your local Board of Health.³⁷

Protecting Your Family During Deleading

1. Notice of Deleading

The landlord must give you a written notice at least 10 days before any deleading work begins. Deleading notification must be sent to all occupants of the building, CLPPP, the Massachusetts Division of Occupational Safety, and your local Board of Health.³⁸ Because most deleading work creates dangerous conditions for both workers and occupants, you (and any pets that you have) likely will have to move out of your home temporarily while deleading work is being done inside.³⁹

Before deleading work begins, you should protect any belongings that you'll leave behind, including food, appliances, furniture, personal items, kitchen utensils, silverware, bedding, toys, and clothes, by removing them from the work area and double-sealing them in large plastic bags. Take anything that you need to have with you in your temporary housing before the deleading work begins. You will **not** be allowed back into your home or in any common areas until the deleading work is done, your apartment is properly cleaned up, and a licensed lead inspector determines that your home is safe to reoccupy.⁴⁰

2. Temporary Housing

You and your landlord should try to agree on a plan for temporary housing while the deleading work is being done. If you choose to move in with family or friends, you do not have to pay any rent to your landlord while you are out of your home.⁴¹

If you do not wish to live with family or friends, the landlord has the right, after giving you reasonable notice of his plans, to move you to temporary substitute housing. This temporary housing must be suitable and not cause you "undue economic or personal hardship."⁴²

If moving to the landlord's choice of a substitute apartment would cause real problems for your family (such as the apartment's being too small, lacking adequate cooking facilities, being located too far away from your job or not as near to public transportation as your original home was), you do not have to accept moving there. You can ask the landlord to provide you with another temporary dwelling unit that does not cause such hardships.⁴³

If you live in temporary housing provided by the landlord, you have only to continue to pay your normal rent to the landlord (or the new landlord, depending upon what arrangements you make). Your landlord must pay any additional cost for the temporary housing, and the landlord must pay for the cost of the

temporary housing, even if it is more than your normal rent. The landlord must also reimburse you for any other expenses and costs that you have as a result of being required to move to this temporary substitute housing, as well as pay your reasonable moving costs, both to the temporary housing and back to your own home after it has been delead and passes re-inspection.

If the landlord does not provide you with suitable temporary housing, you can find your own temporary place to stay. In this situation, you do not have to pay any rent to the landlord during this period of time and the landlord will be responsible for reimbursing you a reasonable amount for that temporary housing, as well as reimbursing you for any other expenses or costs, including your reasonable moving expenses.

If the temporary housing chosen by the landlord is suitable and you refuse to accept it, then you will have to find temporary housing on your own and you will have to pay for that housing on your own. In this case, you do **not** have to pay any rent to the landlord until you are permitted back into your own home. In addition, your landlord does **not** have to reimburse you for any other expenses or costs, except your reasonable moving costs. The landlord must, however, pay you any difference between the cost of the suitable temporary housing that the landlord first chose for you (which you rejected) and the normal rent that you would have paid to the landlord for your apartment that is being delead.⁴⁴

No matter where you choose to stay, the landlord must pay your reasonable moving costs. If you and the landlord cannot agree on a plan for temporary substitute housing, you should consult an attorney to help you negotiate with the landlord.

Enforcing Your Rights under the Lead Law

1. Retaliation Is Illegal

A property owner may not evict you, or increase your rent, or refuse to renew your lease in *retaliation* for your reporting a suspected lead paint violation to your landlord or to an agency such as CLPPP or your local Board of Health.

If the landlord tries to evict you or get back at you in any way within **six months** after you have complained **in writing** about lead paint, a court can automatically find that your landlord has acted in retaliation against you—**unless** the landlord can show clear evidence that she had other reasons for taking the action in question that were not related to the lead paint violations. A court will generally rule that it is **not** retaliation if a landlord is evicting you for failing to pay your rent (unless you are claiming that you have withheld your rent because of Sanitary Code violations).

Landlords who threaten or attempt to take retaliatory actions against tenants for exercising their rights under the Lead Law can be held *liable* for *damages* of up to three months' rent.⁴⁵ For more information about retaliation, see **Chapter 13: Evictions**, Retaliatory Evictions, and **Chapter 14: Taking Your Landlord to Court**, Retaliation. If you believe that the landlord has retaliated against you because you have complained about Lead Law violations, you may also file a complaint for discrimination. For more information, see **Chapter 7: Discrimination**.

2. Rent Withholding

Tenants have a basic obligation to pay rent to the landlord for their home or apartment. But, if your landlord is not taking the proper steps to delead your home after she has been notified **in writing** that there are illegal lead hazards, you **may** have a right to hold back your rent payments under certain circumstances.⁴⁶ You

may take this step only if you are up to date with your rent payments at the time you notified the property owner of the lead paint violations.

Because landlords have the right to go to court to evict tenants for not paying rent, **you should not withhold rent without first talking with a lawyer**. To fully protect yourself against an attempted eviction, you should put any rent that you withhold because of Lead Law violations into a separate bank account and notify the landlord **in writing** why you are withholding your rent. Make sure you keep a copy of this letter.

You may also have a right to use your rent money to have the Lead Law violations repaired (instead of paying that money to your landlord), to file a tenant petition in court to force the landlord to repair the lead hazards and pay you money for failing to do so, or to file a criminal complaint against your landlord because of the Lead Law violations.⁴⁷ **Before you take any of these steps, you should consult with an attorney**. You can read more about these options in **Chapter 8: Getting Repairs Made**.

3. Compensation for Loss or Injury

Your landlord always has a duty to provide housing that is decent and safe for you to live in. All housing in Massachusetts must meet the basic housing standards set out in the state Sanitary Code. If dangerous lead hazards are found in your home in violation of the Lead Law, your landlord has failed to meet her obligations to you and is in violation of the Sanitary Code. In this case, you may be able to get your rent reduced, get back some of the rent that you paid to the landlord in the past, or even get *punitive damages* of up to three months' rent paid to you.⁴⁸ This can be complicated and it is very important to talk with a lawyer about your options.

If you are worried that your child might have been lead poisoned, make sure she is tested. If the tests show that the child has been poisoned,

see a doctor as soon as possible to obtain the proper treatment. If your child has been lead poisoned as a result of illegal lead paint in your apartment, you have a right to sue the landlord for the injuries your child has suffered.⁴⁹ Under the law, your child can file such a case up until her 21st birthday. You should try to find a lawyer who has experience in representing lead-poisoned children and their parents, as these lawsuits can be complex and difficult to pursue. Experienced lawyers will be able to represent you and your children without your paying any fees or costs to the attorney unless and until you win your lawsuit.

A landlord is responsible for all of the injuries a lead-poisoned child may suffer (such as the cost of medical treatments, learning disabilities, future problems in obtaining or holding a job) as a result of residing in an apartment owned by the landlord, even if the landlord claims that she did not know there was lead paint in your apartment or that she was not at fault for causing the lead poisoning.⁵⁰ It is a property owner's responsibility to find the lead paint and remove or cover it any time there is a child under six years of age living on her property.⁵¹ If she does not do so, she is responsible for the harm that her failure causes to your child. Under some circumstances, the landlord can also be forced to pay you *punitive damages* for failing to remove the lead paint after being ordered to do so by CLPPP or your local Board of Health. These punitive damages are three times the amount of the *actual damages* that your child has suffered.

The correct way for a property owner to protect his tenants and their children, as well as protect himself from being sued, is by fully complying with the Lead Law—informing the tenants of the risks of lead paint and removing the dangerous lead hazards in all rental dwellings. A property owner who has obtained a Letter of Full Compliance with the Lead Law from a licensed lead inspector has significant legal protections against being sued for injuries caused by the lead poisoning of a child.⁵²

Financial Assistance for Deleading

Residential property owners who receive a Lead Law Letter of Full Compliance or a Letter of Interim Control are eligible for a **State Tax Credit** to help with the cost of deleading. Additional information concerning the Lead Paint Tax Credit can be obtained by calling the Massachusetts Department of Revenue at 617-887-MDOR or 800-392-6089, or checking its website at: www.mass.gov/dor.

The state "**Get the Lead Out**" program provides low-cost financing to owners of 1- to 4-family properties to remove lead paint and reduce the possibilities of lead poisoning among children. Owner-occupants who meet the income guidelines are eligible for a 0% deferred payment loan not due until the sale, transfer, or refinancing of the property. Investor-owners are eligible for 3% loans on properties that are being rented to income-eligible households, with loan terms from 5-20 years, based on the size of the loan and borrower qualifications. More information about this loan program can be obtained by contacting the Massachusetts Housing Finance Agency at 888-843-6432 or at www.masshousing.com and clicking first on Home Ownership, then on Home Owners, then, under Loans for Home Owners, on Get the Lead Out, to locate a housing rehabilitation agency in the area for assistance in applying for financing and in locating authorized personnel to handle the inspection and abatement process.

The **Home Improvement Loan Program (HILP)** offers low-interest loans to delead owner-occupied 1- to 4-family homes and residential condominiums that have been the borrower's principal residence for a minimum of one year. Loans range from a minimum of \$5,000 to a maximum of \$25,000 per home, and can complement the "Get the Lead Out" program by funding work that exceeds the "Get the Lead Out" loan maximum. Additional information can be obtained by contacting the Massachusetts Housing Finance Agency at

888-843-6432 or at www.masshousing.com and clicking first on Home Ownership, then on Home Owners, then, under Loans for Home Owners, on Home Improvement Loan Program, to find the nearest HILP agent.

The **HUD 203(K) Program** helps current homeowners and investor-owners of 1- to 4-family homes to refinance their mortgage to pay for deleading costs. A minimum of \$5,000 in repairs must be performed. The program is capable of financing major deleading jobs because the loan amount is based upon the value of the property **after** the deleading work has been completed. The program also provides an opportunity to renovate a home and perform other major and minor repairs. Additional

information can be obtained by contacting the Massachusetts Office of the U.S. Department of Housing and Urban Development (HUD) at 617-994-8200 or at:

www.hud.gov/offices/hsg/sfh/203k/203kabou.cfm.

In addition to the above, financing for deleading may be available at local Community Development, Planning, or Rehabilitation agency offices. These government agencies are normally located at the city or town hall. Other programs may be offered by community banks, mortgage companies, or other local lenders.

Endnotes

1. 105 C.M.R. §460.050. Every child must provide proof of a previous lead screening in order to enter kindergarten.
2. Blood lead levels are determined by the amount of micrograms of lead per deciliter of blood. A blood level of 10 means 10 micrograms per deciliter. 105 C.M.R. §460.050(D)(2).
3. 105 C.M.R. §460.020.
4. 105 C.M.R. §§460.710(A), 460.750(B)(2), 460.751(A) and (B).
5. 105 C.M.R. §460.050(C)(2).
6. G.L. c. 111, §§194-199; 105 C.M.R. §460.100.
7. G.L. c. 111, §197(c); 105 C.M.R. §§460.020 and 460.110(B).
8. G.L. c. 111, §199. The property owner will be held responsible (*liable*) for those damages even if she claims that she did not know that a child under six was living on her property or that she did not know that her property contained dangerous lead paint. See *Bencosme v. Kokoras*, 400 Mass. 40, 41; see also *Bellemare v. Clermont*, 69 Mass. App. Ct. 566, 568-569 (2007).
9. G.L. c. 111, §197A(d). See also The Disclosure Rule and Pre-Renovation Education Rule promulgated (at 24 C.F.R. pt. 35) jointly by the EPA and HUD in 1996 pursuant to §1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102-550, Title X), which requires sellers, landlords, and agents to provide lead hazard information and to disclose information about the presence of known lead paint and/or lead paint hazards to prospective homeowners and tenants in pre-1978 housing prior to their housing purchase or rental decision.
10. This free form can be found on the Massachusetts Department of Public Health's website in English at: www.mass.gov/Eeohhs2/docs/dph/environmental/lead/tenant_note.pdf; and in Spanish at: www.mass.gov/Eeohhs2/docs/dph/environmental/lead/tlsp.pdf.
11. *Underwood v. Risman*, 414 Mass. 96, 100 (1993).
12. G.L. c. 111, §197A(e).
13. G.L. c. 93A; G.L. c. 111, §197A(e). See also 105 C.M.R. §460.725.
14. G.L. c. 93A; *Nei v. Burley*, 388 Mass. 307 (1983).
15. Housing for the elderly or for persons with disabilities is not required to follow federal law. However, the exclusions do not cover housing in which any child who is less than 6 years of age resides or is expected to reside. See 24 C.F.R. pt. 35 and 40 C.F.R. pt. 745.
16. G.L. c. 111, §19A(e). Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Title X of the Housing and Community Development Act of 1992, §1018 (1992) (codified at 42 U.S.C. §4852d(2000)).
17. G.L. c. 111, §199A; 105 C.M.R. §460.190(C).
18. Lead determination means a lead inspector's detection of the presence or absence of dangerous levels of lead on one or more selected surfaces in a dwelling unit or residential premises, but not on all surfaces which would require testing for a full lead inspection. See 105 C.M.R. §460.400(C).
19. 105 C.M.R. §§460.700(B), 460.710(C), 105 C.M.R. §410.820. The priority for a local health inspection agency will always be to address emergency situations first (no heat in winter, lead-poisoned child, dangerous rodent infestation, etc.). Home buyers will need to hire their own private inspectors unless the property has previously had a full lead inspection and the seller supplies you with a copy of that inspection report.
20. G.L. c. 111, §197B(a).

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21. G.L. c. 111, §198; 105 C.M.R. §410.750(J).
 22. G.L. c. 111, §194; 105 C.M.R. §410.820(B); 105 C.M.R. §460.710.
 23. 105 C.M.R. §460.730.
 24. 105 C.M.R. §460.750(A)(2).
 25. 105 C.M.R. §460.750(B)(2).
 26. 105 C.M.R. §460.190(A).
 27. 105 C.M.R. §460.110(B).
 28. 105 C.M.R. §460.020.
 29. 105 C.M.R. §460.110(A).
 30. 105 C.M.R. §460.750(A)(2).
 31. G.L. c. 111, §197; 105 C.M.R. §§460.100- 460.175.
 32. 105 C.M.R. §§460.110; 460.760(D).
 33. A risk assessor is a specialized lead inspector who conducts a risk assessment, which is “the procedure for determining and reporting the existence, extent and location of urgent lead hazards in residential premises or dwelling units, and prescribing required measures to be taken for proper interim control. 105 C.M.R. §460.020.
 34. 105 C.M.R. §460.105. The Letter of Interim Compliance is valid for twelve months, during which time the owner must either fully correct the violation to receive a letter of Full Compliance, or pass another risk assessment that will be valid for an additional twelve months.
 35. 105 C.M.R. 460.105(A)(1)(d).
 36. 105 C.M.R. §§460.105(A), 460.110(B).
 37. 105 C.M.R. §460.751.
 38. 105 C.M.R. §460.150(A).
 39. 105 C.M.R. §460.160(A).
 40. 105 C.M.R. §460.160(E).
 41. G.L. c. 111, §197(h).
 42. G.L. c. 111, §197(h).
 43. G.L. c. 111, §197(h).
 44. G.L. c. 111, §197(h).
 45. G.L. c. 186, §18.
 46. G.L. c. 239, §8A.
 47. *Commonwealth v. Racine*, 372 Mass. 631, 631 (1977).
 48. G.L. c. 186, §14.
 49. G.L. c. 111, §199(a).

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50. *Bencosme v. Kokoras*, 400 Mass. 40, 41 (1987).
 51. *Massachusetts Rental Housing Ass'n, Inc. v. Lead Poisoning Control Director*, 49 Mass. App. Ct. 359, 363 (2000).
 52. G.L. c. 111, §199(a).

