



Lead paint, COVID-19, and who knows what's next? - by Lee Wasserman

February 02, 2021 - Owners Developers & Managers

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Most of us are very happy 2020 is behind us. To be better prepared for tomorrow, each of us should spend a little time looking back at where we came from and what we've learned. But don't spend too much time looking in the rearview mirror or you might have a head on collision with lead-based paint! In 2019 and February 2020 (right before COVID-19), NYC passed several very serious lead paint amendments to Local Law 1 of 2004 (Local laws 63-73 of 2019 and 27-31 of 2020).

Why? Because it was well documented that a large percentage of those property owners with the greatest risk were not complying. NYCHA was, and still is, in the midst of a lead-based paint media, regulatory, and political storm. Lead poisoning was all over the news, all over politics and all over the mayors' desk. Accordingly, the city passed several very aggressive and costly amendments to the lead paint regulations, focusing on owner accountability.

As I'm writing this article, I am not aware of any extension of compliance or easing of these newest lead law requirements, which have some quickly arriving deadlines. If you think you're not at risk—think again. The current data leads me to believe there is still a large sector of property owners not aware, or not acting upon, these regulated changes, whereby leaving themselves very exposed to enforcement actions and litigation.

Why be concerned? If you own pre-1960 residential property, several of the amendments may have a major impact on your properties. If you have not already begun addressing these regulatory lead-based paint changes, you need to begin now or very soon.

First, evaluate your prior compliance with NYC HPD Local law 1. Be honest with your evaluation—it's only for your own internal risk management knowledge. Make sure all of your records are in order! Due to lack of documented compliance with previous obligations, HPD is now legally obligated to perform 200 property audits per year, specifically to document compliance or lack thereof. If you have not been collecting dust wipes regularly, if you have not eliminated friction

and impact surfaces on turnovers (doors, windows), if you are not sure if you have all lead paint documentation properly completed, accessible, and executed by the appropriate parties (resident and management)... should HPD randomly audit you (elevated blood lead level in property, resident complaint, HPD already on site, etc.) and you do not have the appropriate required regulatory lead paint related documents, HPD will begin to investigate deeper and potentially issue violations. See link for clear list of regulatory expectations or call author for guidance: <https://www1.nyc.gov/site/hpd/services-and-information/lead-based-paint.page>

If, for some reason, you believe that the property's historical compliance and records may be lacking, don't ignore the next regulatory amendment (February 2020) for this will substantially compound violations if HPD audits your property.

Beginning August 9th, 2020 (rearview mirror), all property owners of pre-1960 residential rental property(ies) (including singles and duplexes) must inspect for lead based paint/test all of their units within five (5) years from 8/9/20 (per LL31/2020). Owners must have a lead-based paint inspection completed at units that had, or have, a child five years of age or younger currently "residing" at the property (per LL64/2019, 10 hours or more per week) or moving in within 12 months of the move in.

For those children residing in your property since last 8/9/2020, these units must be inspected before 8/9/2021 or you risk violation.

I strongly recommend familiarizing, or re-familiarizing, yourself with the current NYC HPD & DOHMH requirements if your property is subject to these NYC lead-based paint regulations and you are not extremely confident of compliance. Begin a lead inspection program of your portfolio of pre-1960 properties sooner rather than later, especially for those units with children residing age five and under!

In an already unstable environment (COVID-19, Dems vs. Reps, social injustices, etc.), residents are typically spending a lot more time within their residential dwelling units. Increasing the risk of exposure, complaints, and other factors. Increasing the risk of city agency visits, which increases the risk of requests for your records to support historical compliance, or lack thereof.

If your property is not exempt and is a regulated pre-1960 residential property, and you wait until May 2021 to get started, you have probably waited too long and are leaving your property(ies) exposed and potentially at risk of violation and litigation.

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