

Omaha Lead Hazard Reduction Act

101. Definitions

Department – Department refers to the City of Omaha’s Code Enforcement which shall provide oversight of the Act and shall establish any regulations or standards necessary to further the intent of the Act.

Lead Free – A lead free property for purposes of this statute includes any property which is constructed after 1978 or which has been tested and certified as lead free in accordance with standards established by the State of Nebraska.

Presence of Lead-Based Paint – Lead-Based Paint is presumed to be present in any residential rental property in the City of Omaha constructed prior to 1978.

Residential Rental Property – Residential rental property includes any property that is offered for rent and which includes living facilities for permanent occupation by one or more individuals. A rental unit within a multifamily residential rental property is considered an individual residential rental property for purposes of this statute and is subject to the registration, inspection, and other requirements of the Act on a per unit basis.

102. Applicability of Act

- (a) This statute applies to any residential rental property in the City of Omaha that was constructed prior to 1978;
- (b) This statute does not apply to a residential rental property that is:
 - (1) Not offered for rent;
 - (2) Constructed after 1978;
 - (3) Certified to be lead free in accordance with standards issued by the Department.

103. Registration

- (a) Prior to occupancy of a residential rental property in the City of Omaha, a rental property owner shall register the property with the City and pay a \$50.00 registration fee;
- (b) On or before December 31st of each subsequent year, a rental property owner shall renew the registration and pay a \$50.00 annual registration fee per residential rental property for the upcoming year.

104. Lead Risk Assessment Inspection

- (a) On or after the effective date of this Act, all residential rental properties are required to undergo a Lead Risk Assessment by an accredited inspector:
 - (1) At change in occupancy in the property;
 - (2) Prior to the sale or refinancing of any property;

- (b) Within 12 months of the effective date of the Act for properties occupied at the time of the Act's effective date; all residential rental properties are required to undergo a Lead Risk Assessment by an accredited inspector
- (c) The purpose of the Lead Risk Assessment is to determine the presence of lead-based paint and/or lead-based paint hazards in the property;
- (d) Owners are required to disclose the results of the Lead Risk Assessment to the occupant and any subsequent occupant or purchaser of the property in accordance with the provisions of the Federal Title X Disclosure Rule;
- (e) A residential rental property under the Act is required to undergo a Lead Risk Assessment only once to determine the presence of lead-based paint;
- (f) A Lead Risk Assessment shall include at a minimum:
 - (i) Visual inspection of painted surfaces;
 - (ii) XRF analysis or paint chip analysis of painted surfaces in accordance with standards established by the Nebraska Department of Department of Health and Human Services;
 - (iii) Lead dust sampling analysis in accordance with standards established by the Nebraska Department of Health and Human Services.

105. • Lead Hazard Reduction

- (a) On or after the effective date of this Act, all residential rental properties are required to undergo lead hazard reduction measures necessary to satisfy the Lead Safe Housing Standard:
 - (1) Prior to occupancy of the property;
 - (2) At each change in occupancy in the property thereafter;
 - (3) In response to a Notice of Defect, Notice of Elevated Blood Lead Level, or a Lead Violation issued by the Health Department;
 - (4) Prior to the sale of the property.

106. Lead Safe Housing Standard

- (a) Compliance with the Lead Safe Housing Standard shall be verified by an independent, unrelated lead inspector who is accredited by the Nebraska Department of Health and Human Services;
- (b) The Lead Safe Housing Standard shall be met by an inspection that:
 - (1) Certifies that the property is lead free; or
 - (2) Verifies through visual inspection that there is no chipping, peeling paint on any interior or exterior painted surface; and
 - (3) Verifies that all windows are lead free windows; and
 - (4) Verifies the passage of lead dust clearance testing in accordance with standards established by the Department.

107. Notices of Defect and Elevated Blood Lead Level

- (a) An owner of a residential rental property shall insure that the property is treated and inspected to meet the Lead Safe Housing Standard within 30 days of receipt of:
 - (1) A Notice of Defect indicating the presence of chipping, peeling, or flaking paint, or a structural defect that is causing paint to chip, peel, or flake;

- (2) A Notice of Elevated Blood Lead Level which indicates that a child under age 6 or apregnant women in the property has been blood lead tested and diagnosed with a blood lead level of 10 ug/dl;
- (3) A Notice of Lead Violation issued by a City or State agency.
- (b) A Notice of Defect or a Notice of Elevated Blood Lead Level can be issued for a residential rental property by the tenant residing in the property or by any party.

108. Lead Safe Work Practices

- (a) Any lead hazard reduction work which disturbs more than 2 square feet of painted surface in a residential rental property shall be conducted in accordance with the lead safe ~~work practice~~ ^{HAZARD Reduction} standards and regulations as established by the Department;
- (b) Any lead abatement work in a residential rental property shall be conducted in accordance with the lead abatement standards and regulations as established by the Department of _____.

109. Relocation

- (a) A rental property owner is required to pay for reasonable relocation expenses for the tenant household of any occupied residential rental property to temporarily relocate while lead hazard reduction measures are being undertaken in the property;
- (b) A rental property owner who fails to respond and bring a property into compliance with the Act within 30 days of receipt of a Notice under Section 107 is required to pay up to \$_____ in reasonable permanent relocation expenses to assist the tenant household in relocating to another property.
→ \$2,500.00

110. Retaliatory Action

- (a) It shall be deemed to be a retaliatory action and illegal under the Act for any rental property owner to attempt to evict the tenant, increase the rental rate, discontinue utility services to the property, or take any other action deemed to be retaliatory primarily due to the tenant or any party:
 - (1) Issuing a Notice of Defect to the Owner;
 - (2) Issuing a Notice of Elevated Blood Lead Level;
 - (3) Issuing a Housing Code Violation, Lead Violation, or any other lead related Notice;
 - (4) Attempting to enforce the provisions or assert rights under the Act;
- (b) Actions taken by the rental property owner or their agent in response to 107(a)(1-4) shall be deemed to be retaliatory for a period of 6 months following any such action.

111. Limited Liability Protection

A rental property owner who meets all of the provisions of the Omaha Lead Hazard Reduction Act shall be deemed to be in compliance with the Act and shall be provided limited liability protection from lawsuits for alleged injury or loss caused by the ingestion of lead by a person residing in the property.

(Final discussion of limited liability provision at 12/11/09 Task Force Meeting. Discuss type of limited liability scheme to be created by Act – Qualified Offer, permanent relocation assistance, etc. Review whether limited liability protection can be established at the City level or whether causes of action in tort are exclusively within the authority of the state legislature to establish or modify)

112. • Enforcement

- (a) An owner who fails to comply with Sections 103, 104, or 105 of this Act shall be subject to a fine of \$ 500.00 per day;
- (b) The Department is authorized to review and conduct enforcement actions against all residential rental properties owned by a rental property owner who is subject to an enforcement action under this Act;
- (c) The Department is authorized under this Act to issue regulations and establish procedures necessary for the effective enforcement of this Act.

113. • Fees

- (a) Fees collected and penalties assessed under this law shall be maintained in a nonlapsing special Lead Hazard Reduction Act Fund;
- (b) Funds from the Lead Hazard Reduction Act Fund may only be disbursed to support:
 - (i) Costs associated with the City's administration and proper execution of the Act;
 - (ii) Costs associated with the City's enforcement of the Act;
 - (iii) Grants for the temporary or permanent relocation of tenant households from properties that are not in compliance with the Act;
 - (iii) Grants and/or low interest loans for the completion of lead hazard reduction or lead abatement measures in City properties.