

October 2006

legal update



City of Rochester Enacts New Lead Based Paint Law

By Scott M. Crane, Esq.

On July 1, 2006 the Lead Based Paint Poisoning Prevention Law went into effect in Rochester. The law which modified Chapter 90 of the Municipal Code, Property Conservation Code requires inspections for lead paint hazards as part of the City's existing Certificate of Occupancy process, and applies to rental units within the City limits.

Lead is a highly toxic substance, exposure to which can produce a wide range of adverse health effects. Both adults and children can suffer from the effects of lead poisoning, but childhood lead poisoning is much more frequent. Lead exposure through ingestion or inhalation may result in reduced IQ, learning disabilities, attention deficit disorders, behavioral problems, stunted growth, impaired hearing, and kidney damage. At high levels of exposure, a child may become mentally retarded, fall into a coma, and even die from lead poisoning. Adult lead poisoning can increase blood pressure and cause fertility problems, nerve disorders, muscle and joint pain, irritability, and memory or concentration problems.

In 2002, the Center for Governmental Research reported that nearly 25% of all children in the City of Rochester had blood lead levels above 10 $\mu\text{g}/\text{dL}$, the standard by which lead causes developmental and possibly physical harm to children. But, despite Rochester's high lead risk, New York State lacks a policy framework to address these lead hazards prior to children being poisoned. As a result, Rochester has adopted a new lead based paint law designed to head off lead poisoning before it occurs.

Although many cities, including Buffalo, have lead hazard prevention ordinances, Rochester's new ordinance is of national significance because it targets available resources on the City's highest risk housing, and because it requires dust wipe tests in high risk housing even after that housing has passed visual inspections. Also of significance is the City's requirement that housing pass a clearance inspection after lead based paint remediation has occurred.

Most City rental properties built before 1978 that require a Certificate of Occupancy are covered by the new law. Neighborhood Empowerment Team (NET) inspection staff, known as Neighborhood Conservation Officers, will visually inspect for deteriorated paint on both the interior and exterior of a unit and bare soil around the dripline of properties city-wide.

To comply with the new law, rental units do not need to be lead free, only lead safe. Deteriorated paint surfaces may not exceed:

- (a) 20 square feet on exterior surfaces;
- (b) 2 square feet on any one interior room or space; or
- (c) 10% of the total surface area on an interior or exterior type of component with a small surface, such as windowsills, baseboards, or trim.

Bare soil is not allowed within the dripline (the area within 3 feet surrounding the perimeter of a building) of any residential building covered by the new law. If lead based paint is present, the new law allows what are called "interim controls", such as covering old lead based paint with lead free paint.

All property inspections, including those performed as part of an application for a Certificate of Occupancy, will include a visual assessment for deteriorated paint and bare soil violations. In addition, wipe samples will be obtained from units located in areas designated as high risk areas by the Mayor of the City of Rochester. These wipe samples will be required in high risk areas even if the property passes a visual inspection, and will be used to determine whether a lead dust hazard exists. According to WROC-TV channel 8 an initial investment of \$300 - \$400 will be required to test homes for lead paint hazards. In addition, the cost to remove hazards has been estimated to cost approximately \$3,000 to \$6,600 per home.

As part of the City of Rochester's proposed year one plan the City has designated two areas as high risk areas. These areas are subject to wipe tests that may result in a separate citation for lead dust hazards. In this first year, this will occur in sections of NET areas B and F. A complete list of all streets in both high risk areas can be found on the City of Rochester's website at:

www.ci.rochester.ny.us/PublicSafety/lead/lead-documents.cfm

If a property is cited with a lead paint hazard violation, the violation may only be removed by one of the following methods;

- (a) certification by a lead-based paint inspector or risk assessor that the property has been determined through inspection not to contain lead based paint; or
- (b) certification by a lead based paint inspector or risk assessor that all lead based paint in the property has been identified and abated, or identified and interim controls implemented, and clearance has been achieved; or

(c) Certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the housing program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided, however, that with respect to the Federal Housing Choice Voucher program, the property has been inspected pursuant to those requirements since the deteriorated paint was last detected; or

(d) where only exterior deteriorated paint violations, other than deteriorated paint violations on porches, and/or bare soil violations are cited, clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented.

Deteriorated paint on the exterior and interior of rental units which require repair must be repaired using Lead Safe Work Practices. Lead Safe Work Practices are federally mandated methods for conducting any type of repair in a unit that disturbs paint. If a residential building is not owner occupied and is in the target area, then the owner or the owner's agent will be required to complete certified Lead Safe Work Practices training prior to conducting any lead paint reduction activity. Neighborhood Conversation Officers will monitor all repairs to deteriorated paint to insure that Lead Safe Work Practices are utilized by property owners. Property owners can attend free Lead Safe Work Practices training courses that are offered by both the City of Rochester and other local agencies.

An owner must provide at least three business days prior written notice to all tenants of a building that lead based paint hazard reduction work will be performed on the interior or exterior of the buildings, together with a copy of the lead hazard information pamphlet issued by the City. In addition, a sign must be posted on the exterior of the property warning that lead based paint hazard reduction is in progress before and during any work that could disturb lead based paint on the exterior of a property.

Occupants may not enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved. Occupants are to be temporarily relocated during hazard reduction activities until a clearance examination has been successfully completed on the occupant's unit, and occupants who relocate to a unit not owned by their landlord are not liable for rent accruing during that time unless an exception applies.

The new law also prohibits retaliatory action against a tenant who reports a suspected lead based paint hazard to the owner or to the City. The new law contains a presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner, or any enforcement action in connection with a suspected lead hazard, is a retaliatory action in violation of the Lead Based Paint Poisoning Prevention

Law. Therefore, a landlord may not use a tenant's complaint about a lead based paint violation as a means to terminate a tenant's lease and must be prepared to provide an alternative reason to justify terminating a lease following such a complaint.

Currently, the City of Rochester has lead hazard control grants for investor owners (landlords) and owner occupants. If a rental property has apartments with two or more bedrooms, and was built before 1978, it may be eligible for help in testing and correcting lead hazards. Landlords renting to families with income within certain limits are eligible. Priority is given to homes where children under the age of six live and those that house children who have elevated blood-lead levels. Participating owners must also agree to maintain rents at affordable levels for a five-year period. The City will provide up to \$24,000 per unit on a 4:1 matching basis--for every dollar a landlord provides, the City will provide four dollars for windows, entry doors and porch repair or replacement, paint stabilization, bare soil treatment and general rehabilitation. If necessary, the City may even relocate affected tenants while the work is being performed. You can learn more about this grant program by calling the appropriate City personnel at 428-6827.