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NOTICE TO PROPERTY OWNERS AND TENANTS:
TENANT'S RIGHTS AND RESPONSIBILITIES

Hazards

Lead paint hazards under the Lead Law and the state Sanitary Code have been found in the home or apartment listed in the attached documents. These hazards may be a danger to the health of the people living in the home or apartment. Children younger than six years old are at the most risk of being lead poisoned. Lead can damage a child's growing brain and other parts of the body. Even small amounts of lead can harm a child.

The owner of this home or apartment is responsible for removing or covering the lead hazards (deleading) if a child under six lives in the home.

Legal Rights and Responsibilities

For these lead hazards to be delead as quickly and safely as possible, it helps if both the owner and the tenant cooperate with each other. It is important that tenants and owners know their rights under state law. Because the laws are not simple, tenants may need to get legal help and/or legal advice before trying to use the rights found below.

- (1) Temporary Housing. (Massachusetts General Laws chapter 111, section 197)
Tenants and their pets **must** be temporarily moved out of the home or apartment for the whole time that high-risk or moderate-risk deleading work is taking place inside the home or apartment. They cannot return until that work is done, the unit is cleaned up and a licensed lead inspector finds that the home or apartment is safe.

The owner and tenants have to agree on a plan for temporary housing. If the tenants choose to move in with family or friends they do not have to pay rent to their landlord while they are out of their home. If the tenants do not stay with family or friends, the owner must find the temporary housing and offers it to the tenant. The Law requires that owners pay any charges for the temporary housing the owner offers, and that tenants continue to pay their full normal rent during the time they live in the temporary housing. The temporary housing must be one that "does not cause undue economic or personal

hardship to the tenant.” If the temporary housing chosen by the owner would not cause a hardship, and the tenant still refuses to accept it, then the tenant has to find and arrange for his or her own temporary housing during deleading. In this case, the tenant doesn’t have to pay rent for the days he or she is not at home, but has to pay the cost of the temporary housing he or she has chosen. In this case, the owner has to pay the tenant any amount by which the cost of the temporary housing first chosen by the owner is more than the rent for that period. No matter where the tenant stays, the owner must pay reasonable moving costs. Tenants are advised to get legal help if they cannot agree with the owner on a plan.

(2) Protection from Retaliatory Rent Increase or Eviction.

A property owner may not evict a tenant, or increase the rent or refuse to renew the lease of a tenant in retaliation (getting even) for the tenant reporting a suspected lead paint violation to a code enforcement agency such as the local board of health. If the rent is raised, or tenants get an eviction notice or their lease is not renewed within **six** months after the tenants called the board of health or got their home delead, a court can automatically find that the owner took this action in retaliation **unless** the owner can show clear evidence that he or she had other reasons, unrelated to the violations. **An eviction based on not paying the rent is not retaliatory.** Property owners who are found to have threatened or taken actions against tenants for exercising rights under the Lead Law are liable for damages under M.G.L. c. 186, s. 18 and M.G.L. c. 93A.

A tenant who believes that the owner has retaliated against him or her because of lead violations may also file a complaint with the Massachusetts Commission Against Discrimination (MCAD).

(3) Rent Withholding. (Massachusetts General Laws chapter 239, section 8A)

Tenants have a basic obligation to pay rent for their home or apartment to the owner. But, if lead violations are not being delead, tenants may have a right to hold back their rent payments. Tenants may take this step **only** if they were up to date in their rent at the time the owner was notified of the lead paint violations, and they did not begin withholding until this point. Owners have the right to go to court to evict tenants for not paying rent. To fully protect themselves against attempted evictions, tenants withholding rent for Lead Law violations may need to place withheld rent money in an escrow (separate savings) account, or may be ordered to do so by the court. If these conditions are met, tenants may not be evicted for not paying rent or for any other violation that is not the tenants’ fault.

Owners have the right to enter the tenants’ home or apartment, if possible by appointment, but in any case in emergencies, to inspect for lead violations and to have them repaired. Tenants have a responsibility to cooperate with owners and allow all necessary access to their home or apartment for repairs. Tenants who do not cooperate with this right of entry may be subject to eviction. If rent was withheld, the court may

order that all or part of the withheld rent be paid to the owner after the violations are deleaded.

- (4) Abatement of Rent or Damages. Even when the rent withholding statute does not apply, tenants may be able to have their rent reduced or get back rent they have already paid, if their home or apartment has Lead Law violations. The landlord always has a duty to provide housing that meets basic housing standards. A tenant can bring a court action for breach of this “implied warranty”.
- (5) “Rent Receivership”. (Massachusetts General Laws, chapter 111, sections 127C - 127J) This law allows tenants, the state Childhood Lead Poisoning Prevention Program or the local board of health to ask the court to find that Lead Law violations exist, and to allow rent to be paid into court rather than to the owner, to pay for necessary repairs.
- (6) Owner Liability: Compensatory and Punitive Damages. (Massachusetts General Laws chapter 111, section 199)
The owner of a home or apartment built before 1978 is liable for damages to a child under age six who becomes lead poisoned as a result of the owner’s failure to comply with the Lead Law and regulations. The owner of such home or apartment who is notified through an Order to Correct Violations or Order to Restore Interim Control Measures of lead violations, and who willfully fails to correct the violations, in accordance with the Lead Law and Regulations, is also subject to punitive damages, which are triple the actual damages found.

NOTE: All the information presented above is only a summary of the law. Before you decide to withhold your rent or take any other legal action, it is advisable that you consult an attorney. If you cannot afford to consult an attorney, you should contact the nearest Legal Services office.

Repainting

Violations of the Lead Law are also violations of the state Sanitary Code. Surfaces from which lead paint or other coatings have been removed have to be repainted under 105 CMR 410.020 of the state Sanitary Code. Deleaded surfaces have to be sealed and made easy to clean. Deleaded surfaces can only be repainted **after** the surfaces have been reinspected while bare and approved by a licensed lead inspector.

Tenants may want to contact the owner if the required repainting is not done. If the owner does not respond, tenants should call the local board of health.