

6. Can I refuse to rent to a family with a child under six as a way of avoiding my obligation to delead?

No. The Lead Law prohibits rental discrimination, including refusing to rent to families with children under six, or evicting or refusing to renew the lease of families with children under six, because of lead paint. M.G.L. c. 111, s. 199A. Discrimination is also a violation of the U.S. Fair Housing Act, 42 U.S.C. 3604, and the Massachusetts anti-discrimination statute, M.G.L. c. 151B, s. 4. Parents cannot waive the rights of their children to live in lead-safe housing or agree to assume the risks of lead exposure.

7. How do I obtain evidence that my property is in compliance with the Lead Law

You need either a Letter of Full Compliance or a Letter of Interim Control. A Letter of Full Compliance is a legal letter, signed and dated by a licensed lead inspector, that says either that there are no lead paint hazards in the property, or that the property has been delead. A Letter of Interim Control is a legal letter, signed and dated by a licensed risk assessor, that says work necessary to make a home temporarily safe from lead hazards has been done. A Letter of Interim Control is good for one year, but can be renewed for one more year.

8. How do I get a lead inspection or risk assessment?

Call the state Department of Public Health Childhood Lead Poisoning Prevention Program (CLPPP) for a list of their licensed private lead inspectors and risk assessors, or contact your local board of health. Many of these contractors advertise in the telephone yellow pages as well.

9. How can I get my property delead or brought under interim control?

Based on the findings of a lead inspection or risk assessment, a delead licensed by the state

Department of Labor and Industries (DLI) must do any removal of lead paint, leaded components and surfaces (such as windows and woodwork, with the exception of doors, cabinet doors and shutters) and making leaded surfaces intact. The property owner or an agent who works for the property owner who is not a licensed delead can do certain low-risk deleading and interim control tasks. For a list of licensed delead, call DLI at 1-800-425-0004 or CLPPP at 1-800-532-9571. For information on low-risk owner/agent deleading and interim control work, call CLPPP.

10. Is there financial assistance to help owners pay for deleading?

Yes. First, there is a state income tax credit of up to \$1,500 per unit for deleading for full compliance. A state income tax credit of up to \$500 per unit is available for half the cost of interim control work that also contributes to full compliance. Second, there are grants and no-interest or low-interest loans available to eligible property owners through the U.S. Department of Housing and Urban Development, the Massachusetts Executive Office of Communities and Development, the Massachusetts Housing Finance Authority, local city and town community development, rehabilitation and planning departments, as well as private banks. Call CLPPP for more detailed information on finding financial assistance.

WHERE TO GET INFORMATION

Massachusetts Division of Insurance

470 Atlantic Avenue
Boston, MA 022 10-2223
(617) 521-7777

Massachusetts Department of Public Health Childhood Lead Poisoning Prevention Program

470 Atlantic Avenue, 2nd Floor
Boston, MA 02210-2224
1-800-532-9571 or (617) 753-8400

Disclosure Statement

Questions & Answers:

Lead Poisoning and Residential Rental Property



The above rules apply to rental properties, including those that are owner-occupied. The rules do not permit regular market and FAIR Plan homeowners insurance policies on single family owner-occupied homes to contain lead liability exclusions. While regular market or FAIR Plan homeowners insurance on a single family owner-occupied home will cover lead liability claims, such coverage will not extend to claims made by persons, including children, who are covered under the same policy for liability claims made against them. Note:

Surplus lines carriers (less regulated insurers that are not part of the regular market, and that provide insurance to those who cannot find it elsewhere, generally at higher than regular market prices) are not subject to any of the above requirements regarding lead liability insurance.

2. What Is lead poisoning?

Lead poisoning is a disease especially dangerous for children under six years old. It is caused by ingestion or inhalation of lead. In young children, too much lead in the body can cause serious damage to the brain, kidneys, nervous system and red blood cells. High levels of lead can cause retardation, convulsions, coma and sometimes death. Low levels can slow a child's development and cause learning and behavioral problems.

3. How do children become lead poisoned?

Children most often are exposed to lead through ingestion of lead paint dust and lead paint debris. Such dust and debris may accumulate in window wells, window sills, floors and other surfaces through normal use and wear of lead-painted building components. Chipping or peeling leaded paint, plaster or putty also creates lead dust and debris. Children do not have to chew on lead-painted surfaces to become poisoned. In fact, research has shown that the normal hand-to-mouth activity of young children, bringing a small amount of fine lead dust into the child's system, is

responsible for most lead poisoning. Children can also be exposed to lead from other sources, such as leaded soil or water, but these rarely cause lead poisoning by themselves.

4. Do I face serious liability if a child becomes poisoned on my property?

Yes. Under the Lead Law, a property owner is strictly liable for damages resulting to a lead-poisoned child caused by his or her failure to comply with the Lead Law. This means that the property owner does not even have to be aware of the presence of lead paint in his or her property. The potential damages that may be awarded in such cases may depend on the degree of lead poisoning. Court awards can be considerable for severely-poisoned children, as they often include the costs of lost potential earnings, long-term remedial education and medical care for what can be permanent injuries. A property owner who meets the requirements of the Lead Law is free of strict liability as long as he or she maintains a valid Letter of Compliance or Letter of Interim Control. However, such a property owner must exercise reasonable care to maintain the condition of compliance. He or she can become liable to a lead-poisoned child if he or she breaches that duty of reasonable care — that is, is negligent.

5. What does the Lead Law require property owners to do?

Owners of residential property built before 1978 in which children under six years of age live must have the property inspected for lead paint by a licensed lead inspector or risk assessor. If there are lead Law violations, the property owner must have the unit deleaded for full compliance, or brought under interim control.

1. Are insurers required to cover lead poisoning liability claims resulting from lead in dwelling units, or can they exclude coverage of such claims?

There is no single answer to this question. An insurer may decline to insure any premises for liability insurance of any kind. But, once such an insurer in the regular ("admitted") market elects to write liability coverage on any given residential rental premises constructed before 1978, it must cover liability from injury from lead in dwelling units, if that injury arises from any part of the premises that complies with the Lead Law. However, under such insurance, injuries from lead in dwelling units are not covered if they result from an insured owner's gross or willful negligence. An insurer in the regular market may exclude coverage of liability for injury from lead in a residential rental dwelling unit if the unit (and associated common area) is not in compliance with the Lead Law. However, if such an insurer intends to apply an exclusion of this kind, it must, at the same time, offer the insured the option of "buying back" the lead coverage it intends to exclude. (Lead "buy back" coverage costs extra. Its price is regulated by the Division of Insurance.) Also, if a new owner of residential rental property constructed before 1978 is insured for liability by a regular market carrier, he or she generally will be insured for liability for injury from lead in dwelling units, occurring within 90 days of taking title, if, before the end of the 90-day period, he or she comes into compliance with the Lead Law.

The above lead liability insurance rules apply to all policies containing liability insurance that are written on residential rental properties by regular market insurers. The rules also apply to homeowners insurance from the FAIR Plan. The FAIR Plan offers homeowners insurance to property owners unable to find coverage in the regular market. It does not provide commercial liability coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEAD POISONING EXCLUSION – MASSACHUSETTS

DEFINITIONS

With respect only to the provisions of this endorsement, Paragraph **B.2.** "Bodily injury" in the form attached to this policy is replaced by the following. Also, with respect only to the provisions of this endorsement, this definition applies to Farmers Personal Liability Endorsement **HO 24 73:**

2. "Bodily injury" means bodily harm, sickness or disease arising out of lead poisoning, including required care, loss of services and death that results.

SECTION II – EXCLUSIONS

F. Coverage E – Personal Liability

The following Exclusion is added:

7. "Bodily injury":
 - a. Resulting from an "insured's" gross or willful negligence; or
 - b. Caused by the presence or exposure of lead in or on any of the following:
 - (1) A residential unit, including common areas used in connection with such unit, that is rented, or held for rental, to others, in any one to four family residential building built before 1978, provided that the building is owned by an "insured";
 - (2) A residential unit, including common areas used in connection with such unit, in any condominium or cooperative residential building built before 1978, provided that such unit is owned by an "insured" and rented, or held for rental, to others;
 - (3) Any other structure owned by an "insured" and rented, or held for rental, to others which is at the same location as any residential building described in **b.(1)** or **(2)** above; or
 - (4) Appliances, furnishings and fixtures, other than plumbing fixtures, owned by an "insured" and rented, or held for rental, to others and contained in or on a residential building or other structure described in **b.(1)**, **(2)** or **(3)** above.

(This is Exclusion **10.** in Endorsement **HO 24 73**)

Exclusion **7.b.** above does not apply to:

1. "Bodily injury" which occurs on or after the date a lead inspector, authorized to do so under the Massachusetts Lead Law, issues:
 - a. A Letter of Interim Control or its equivalent. However, this exception to Exclusion **7.b.** applies only to such covered unit(s), or to such other covered property, to which the letter applies and only for the period of time such letter is in effect; or
 - b. A Letter of Compliance or its equivalent. However, this exception to Exclusion **7.b.** applies only to such covered unit(s), or to such other covered property, to which the letter applies; or
2. "Bodily injury" which occurs within 14 days after an "insured", or a managing agent for an "insured", is notified by an authorized lead inspector of the need to bring any of the property, described in **7.b.** above, into compliance with the provisions of the Letter of Interim Control;
3. "Bodily injury" which occurs within any extension to the 14 day period described in **2.** above, which is granted by the lead poisoning control director, local code enforcement agency or board of health, or by judicial order, except "bodily injury" for which an "insured" is strictly liable under the Massachusetts Lead Law; or
4. "Bodily injury" which occurs because of exposure to lead which exposure occurs during a period ending 90 days from the date an "insured" took title to the real property described in **7.b.** above if such "bodily injury" is caused by the presence or exposure of lead in or on that real property. However, this exception to Exclusion **7.b.** applies only if an "insured", within 90 days from taking title, complies with the requirements of the Massachusetts Lead Law that apply to new owners.

You agree to let us or our agent know, as soon as practicable, when you receive a Letter of Interim Control or a Letter of Compliance, or the equivalent, and to provide us with a copy of such letter, upon our request.

All other provisions of this policy apply.

**Massachusetts Property Insurance Underwriting Association
2 Center Plaza, Boston, MA 02108-1904
Telephone No's: (617) 723-3800, MA Only (800) 392-6108**

**HOMEOWNER INSURANCE
LEAD POISONING EXCLUSION AND COVERAGE OPTION**

**NOTICE TO PERSONS APPLYING FOR INSURANCE
AND
NOTICE TO POLICYHOLDERS**

This is a discussion of the Massachusetts lead poisoning exclusion that may apply to the residential building or residential unit insured under the policy that you are applying for or have just received.

It gives you information about:

- the conditions that pertain to the exclusion and the availability of an option that overrides the exclusion, and
- the requirements that pertain to the optional coverage.

No coverage is provided by this summary nor can it be construed to replace any provision of your policy. You should read the Policy for complete information regarding the lead poisoning exclusion and, if purchased, the Coverage for Lead Poisoning Endorsement. If there is any conflict between the policy and this notice, **THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

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1. LEAD POISONING EXCLUSION -- COVERAGE E - PERSONAL LIABILITY

- A. Coverage E in the Homeowners policy excludes bodily injury arising from lead poisoning caused by the presence or exposure of lead in or on a residential unit, including the common areas used in connection with such unit, that you own and rent to others.
- B. If you own a one to four family residential building or a residential condominium or cooperative unit and/or occupy a residential unit in any residential building, located in Massachusetts, the lead poisoning exclusion may not apply to you. Read the following to determine whether this is the case.
- (1) If the residential building was built in or after 1978, the exclusion does **not** apply; **the rest of this notice does not apply to you.**
 - (2) If the residential building was built before 1978 and no residential unit is rented or held for rental to others, the exclusion does **not** apply; **the rest of this notice does not apply to you.**
 - (3) If the residential building was built before 1978, and:
 - (a) one or more residential units, in the residential building, or residential units you own in the condominium or cooperative residential building is rented, or held for rental, to others; and/or
 - (b) you own and rent, or hold for rental, to others one or more other structures at the same location as the residential building described in (3)(a); and

A Letter of Interim Control or a Letter of Compliance is issued for units or other structures described in (3)(a) or (b) above, the exclusion does **not** apply to that unit or other structure, but will apply with respect to other units and/or other structures that you own and do not occupy. IT IS IMPORTANT THAT YOU LET US KNOW, AS SOON AS PRACTICABLE, THAT YOU HAVE RECEIVED A LETTER OF INTERIM CONTROL OR A LETTER OF COMPLIANCE AND THAT, UPON OUR REQUEST, YOU SEND US A COPY OF YOUR LETTER OF INTERIM CONTROL OR COMPLIANCE IF YOU HAVE NOT ALREADY DONE SO.

THROUGHOUT THIS NOTICE, A LETTER OF INTERIM CONTROL OR A LETTER OF COMPLIANCE INCLUDES ANY OTHER EQUIVALENT LETTER ISSUED BY A LEAD INSPECTOR AUTHORIZED TO DO SO UNDER THE MASSACHUSETTS LEAD LAW.

Please note, however, that if you have or obtain a Letter of Interim Control for a unit and/or other structure and it expires before you obtain a Letter of Compliance for that unit and/or other structure, THE EXCLUSION APPLIES TO THAT UNIT OR OTHER STRUCTURE UNTIL THE LETTER OF COMPLIANCE IS OBTAINED.

Send a copy of the Letter to: Massachusetts Property Insurance Underwriting
Association
2 Center Plaza, Boston, MA 02108-1904

- (4) If the residential building, other structure or condominium or cooperative unit is newly purchased by you, the exclusion does not apply during a period ending 90 days from the date you took title to such real property. However, this provision applies only if you, within 90 days of taking title to the property, obtain a Letter of Interim Control or Compliance.
 - (5) If the residential building was built before 1978, and one or more residential units are rented or held for rental to others, and you, or your managing agent, is notified by an authorized lead inspector of the need to bring any unit in the residential building into compliance with the provisions of the previously granted Letter of Interim Control, the exclusion does **not** apply to that unit for a period of 14 days, **the rest of this Notice does not apply to you with respect to that unit for a period of 14 days. After that time the exclusion applies to that unit, subject to B.(6) below.** IT IS IMPORTANT THAT YOU LET US KNOW, AS SOON AS PRACTICABLE, THAT YOU HAVE RECEIVED A LETTER OF INTERIM CONTROL AND THAT YOU SEND US, UPON OUR REQUEST, A COPY OF YOUR LETTER OF INTERIM CONTROL IF YOU HAVE NOT ALREADY DONE SO.
 - (6) If the 14 day period described in B.(5) above is extended by the lead poisoning control director, local code enforcement agency or board of health, or by judicial order, the exclusion does not apply to that unit during this extension, except that the exclusion does apply with respect to bodily injury for which you are held strictly liable under the Massachusetts Lead Law.
- C. If the conditions described in B. (1) through B. (6) above do not apply to a given unit in the residential building or other structure located in Massachusetts that you own and are renting or holding for rental to others, **then the exclusion applies to that unit.**
- D. We will reduce the premium charged for each location to which the exclusion applies because of a reduction in coverage.

2. **COVERAGE OPTION AND LEAD POISONING LIMITS**

- A. You may buy coverage to override the lead poisoning exclusion for all residential units for which you have not obtained a Letter of Interim Control or Letter of Compliance.
- B. (1) If this is a **NEW** or **RENEWAL POLICY** with us and you did not choose this coverage before, you may do so at anytime.

(2) Unless you and we agree otherwise, if you request coverage for lead poisoning within 30 days of receipt of this NOTICE, coverage will be effective on the inception date of this policy; if your request for lead poisoning coverage is made after 30 days of your receipt of this NOTICE, coverage will become effective as of the date of your request.
- C. If this is a **RENEWAL POLICY** with us and your expiring policy has lead poisoning coverage, we have continued to provide you with this coverage for the same limit in your expiring policy, unless you have requested us to do otherwise.
- D. The minimum lead poisoning limit we offer is \$100,000 and the maximum limit is \$500,000. The lead poisoning limit can be less than, or the same as, the Coverage E limit of liability stated on the Declarations page of your policy subject to the minimum limit noted above. **It cannot be more than the Coverage E limit of liability stated on the Declarations page of your policy.**

3. **MORE THAN ONE LOCATION**

Only one Coverage E limit of liability and one lead liability limit will apply.

If you choose to purchase lead poisoning coverage and your policy insures, under Coverage E, two or more dwellings and/or residential units in a residential building located in Massachusetts, make sure that the locations to which Lead Liability Coverage applies are listed on Endorsement HO 24 42.

If they are not, call us at 1-800-392-6108 or notify your agent or broker and arrange for the necessary listing of locations.