

West's Vermont Statutes Annotated Currentness

Title Eighteen. Health

▢ [Part 2. Public Health Regulations](#)

➔ Chapter 38. Lead Poisoning

§ 1751. Definitions

(a) Words and phrases used in this chapter have the same definitions as provided in the Federal Residential Lead-Based Paint Hazard Reduction Act of 1992 [FN1] unless there is an inconsistency in which case, any definition provided in this section that narrows, limits, or restricts shall control.

(b) For the purposes of this chapter:

(1) "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate state and federal agencies. The term includes:

(A) Removal of lead-based paint and lead-contaminated dust, permanent containment or encapsulation of lead-based paint, replacement of lead-painted surfaces or fixtures, and removal or covering of lead-contaminated soil.

(B) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(2) "Child" or "children" means an individual or individuals under the age of 18 years, except where specified as a child or children six years of age or younger.

(3) "Child care facility" means a child care facility or family child care home as defined in [33 V.S.A. § 4902](#) that was constructed prior to 1978.

(4) "Deteriorated paint" means any interior or exterior lead-based paint or other coating that is peeling, chipping, chalking, or cracking or any paint or other coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(5) "Due date" means the date by which an owner of rental target housing or a child care facility shall file with the department the EMP compliance statement required by [section 1759](#) of this title. The due date shall be one of the following:

(A) No later than 366 days after the most recent EMP compliance statement or EMP affidavit was received by the department.

(B) Within 60 days after the closing of the purchase of the property if no EMP compliance statement was filed with the department within the past 12 months.

(C) Any other date agreed to by the owner and the department.

(D) Any other date set by the department.

(6) "Dwelling" means

(A) any residential unit, including attached structures such as porches and stoops, used as the home or residence of one or more persons.

(7) "Elevated blood lead level" means having a blood lead level of at least five micrograms per deciliter of human blood, or a lower threshold as determined by the commissioner.

(8) "EMP" means essential maintenance practices required by [section 1759](#) of this title.

(9) "Independent dust clearance" means a visual examination and collection of dust samples, by a lead inspector or lead risk assessor who has no financial interest in either the work being performed or the property to be inspected, and is independent of both the persons performing the work and the owner of the property. The lead inspector or lead risk assessor shall use methods specified by the department and analysis by an accredited laboratory to determine that lead exposures do not exceed limits set by the department utilizing current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.

(10) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and other lead hazards and the provision of a report explaining the results of the investigation.

(11) "Interim controls" means a set of measures designed to temporarily reduce human exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment of management and resident education programs.

(12) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established under section 302(c) of the Federal Lead-Based Paint Poisoning Prevention Act. [FN2]

(13) "Lead contractor" means any person employing one or more individuals licensed by the department under this chapter.

(14) "Lead abatement worker" means any individual who has satisfactorily completed an accredited training program approved by the department and has a current license issued by the department to perform abatements.

(15) "Lead designer" means any individual who has satisfactorily completed an accredited training program approved by the department and has a current license issued by the department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

(16) "Lead hazard" means any condition that causes exposure to lead inside and in the immediate vicinity of target housing from water, dust, soil, paint, or building materials that would result in adverse human health effects as defined by the department using current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.

- (17) "Lead inspector" means any individual who has satisfactorily completed an accredited training program approved by the department and has a current license issued by the department to conduct inspections.
- (18) "Lead risk assessor" means any individual who has satisfactorily completed an accredited training program approved by the department and has a current license issued by the department to conduct risk assessments.
- (19) "Lead-safe renovator" means any person who has completed a lead-safe training program approved by the department and has a current registration issued by the department to perform renovations in target housing or child care facilities in which interior or exterior lead-based paint will be disturbed.
- (20) "Lead supervisor" means any individual who has satisfactorily completed an accredited training program approved by the department and has a current license issued by the department to supervise and conduct abatement projects and prepare occupant protection plans and abatement reports.
- (21) "Occupant" means any person who resides in, or regularly uses, a dwelling, mobile dwelling, or structure.
- (22) "Owner" means any person who, alone or jointly or severally with others:
- (A) Has legal title to any dwelling or child care facility with or without actual possession of the property.
 - (B) Has charge, care, or control of any dwelling or child care facility as agent of the guardian of the estate of the owner.
 - (C) Has charge, care, or control of any dwelling or child care facility as property manager for the owner if the property management contract includes responsibility for any maintenance services, unless the property management contract explicitly states that the property manager will not be responsible for compliance with [section 1759](#) of this title.
 - (D) Is the chief executive officer of the municipal or state agency that owns, leases, or controls the use of publicly owned target housing or a child care facility.
 - (E) Is a person who has taken full legal title of a dwelling or child care facility through foreclosure, deed in lieu of foreclosure, or otherwise. "Owner" does not include a person who holds indicia of ownership given by the person in lawful possession for the primary purpose of assuring repayment of a financial obligation. Indicia of ownership includes interests in real or personal property held as security or collateral for repayment of a financial obligation such as a mortgage, lien, security interest, assignment, pledge, surety bond, or guarantee and includes participation rights of a financial institution used for legitimate commercial purposes in making or servicing the loan.
- (23) "Rental target housing" means target housing offered for lease or rental under a rental agreement as defined in [9 V.S.A. § 4451](#). "Rental target housing" does not include a rented single room located within a dwelling in which the owner of the dwelling resides unless a child six years of age or younger resides in or is expected to reside in that dwelling.
- (24) "Risk assessment" means an on-site investigation by a lead risk assessor to determine and report the ex-

istence, nature, severity, and location of lead hazards, including information gathering about the age and history of the property and occupancy by children six years of age or younger, visual inspection, limited wipe sampling, or other environmental sampling techniques, other appropriate risk assessment activities and a report on the results of the investigation.

(25) "Screen," "screened," or "screening" relating to blood lead levels, means the initial blood test to determine the presence of lead in a human.

(26) "Target housing" means any dwelling constructed prior to 1978, except any 0-bedroom dwelling or any dwelling located in multiple-unit buildings or projects reserved for the exclusive use of the elderly or persons with disabilities, unless a child six years of age or younger resides in or is expected to reside in that dwelling. "Target housing" does not include units in a hotel, motel, or other lodging, including condominiums that are rented for transient occupancy for 30 days or less.

[FN1] [42 U.S.C.A. § 4851 et seq.](#)

[FN2] [42 U.S.C.A. § 4822.](#)

§ 1752. Accreditation of training programs; certification and licensure of environmental lead inspectors and lead contractors, supervisors and workers

(a) No later than six months after promulgation of final federal regulations under section 402 of the Federal Toxic Substances Control Act ([15 U.S.C. § 2601 et seq.](#)), the department shall develop a program to administer and enforce the lead-based paint activities training and certification standards, regulations, or other requirements established by the administrator of the federal Environmental Protection Agency for persons engaged in lead-based paint activities.

(b) The secretary shall adopt emergency rules, and not later than January 1, 1994, the secretary shall adopt permanent rules, establishing standards and specifications for the accreditation of training programs both within and outside Vermont, including the mandatory topics of instruction, the knowledge and performance standards that must be demonstrated by graduates in order to be certified, and required qualifications for training programs and instructors. Such standards shall be designed to protect children, their families, and workers from improperly-conducted lead-based paint activities, and shall be at least as protective of human health and the environment as the federal program. Hands-on instruction and instruction for identification and proper handling of historic fabric and materials shall be components of the required training.

(c) The commissioner shall certify risk assessors, designers, laboratories, inspectors, lead-safe renovation contractors, lead contractors, supervisors, abatement workers, and other persons engaged in lead-based paint activities when such persons have successfully completed an accredited training program and met such other requirements as the secretary may, by rule, impose.

(d) After the adoption of rules pursuant to subsection (b) of this section, no person shall perform lead-based paint activities without first obtaining a license from the commissioner. The commissioner may grant a license to a person who holds a valid license from another state.

(e) Nothing in this chapter shall be construed to limit the authority of the secretary, the commissioner of health, the commissioner of labor, or the commissioner of environmental conservation under the provisions of any other law.

§ 1753. Accreditation, registration, certification, and license fees

(a) The commissioner shall assess fees for accrediting training programs and for certifications, registrations, licenses, and license renewals issued in accordance with this chapter. Fees shall not be imposed on any state or local government or nonprofit training program and may be waived for the purpose of training state employees.

(b) Each accredited training program, registrant, and licensee shall be subject to the following fees:

Training courses = \$480.00 per year

Lead contractors = \$600.00 per year

Lead workers = \$60.00 per year

Lead supervisors = \$120.00 per year

Lead inspectors = \$180.00 per year

Lead risk assessors = \$180.00 per year

Lead designers = \$180.00 per year

Laboratories = \$600.00 per year

Lead-safe renovators = \$50.00 per year

(c) Each lead abatement project shall be subject to the following permit fees:

(1) Lead abatement project permit fee \$50.00.

(2) Lead abatement project permit revision fee \$25.00.

(d) Fees imposed by this section shall be deposited into the lead paint abatement accreditation and licensing special fund. Monies in the fund may be used by the commissioner only to support departmental accreditation, registration, certification, and licensing activities related to this chapter. The fund shall be subject to the provisions of subchapter 5 of chapter 7 of Title 32.

§ 1754. Public education

(a) Beginning January 1, 1994, the commissioner of health shall prepare and distribute clear and simple printed materials describing the dangers of lead poisoning, the need for parents to have their child screened, how to have a child tested, and recommended nutrition and housekeeping practices. The commissioner shall work with persons and organizations involved in occupations that may involve lead-based paint hazards or childhood lead

poisoning to distribute the materials to their clients, patients, students, or customers, such as realtors, subcontractors, apartment owners, public housing authorities, pediatricians, family practitioners, nurse clinics, child clinics, other health care providers, child care and preschool operators and kindergarten teachers. The commissioner shall also identify those points in time or specific occasions when members of the public are in contact with public agencies and lead might be an issue, such as building permits, home renovations, and the ANFC and WIC programs, and make the materials available on these occasions.

(b) The commissioner shall prepare an appropriate media campaign to educate the public on lead poisoning prevention. The commissioner shall encourage professional property managers, rehab and weatherization contractors, minimum housing inspectors, social workers, and visiting nurses to attend education and awareness workshops.

(c) The commissioner shall develop a program or approve a program, or both, to train owners and managers of rental target housing and child care facilities and their employees to perform essential maintenance practices. The names and addresses of all persons who attend the approved training program shall be maintained as a public record that the commissioner shall provide to the department of housing and community affairs.

§ 1755. Universal screening

(a) The commissioner shall publish guidelines that establish the methods by which and the intervals at which children should be screened and given a confirmation test for elevated blood lead levels, according to the age of the children and their probability of exposure to lead. The guidelines shall take into account the recommendations of the U.S. Centers for Disease Control and the American Academy of Pediatrics and shall be updated as those recommendations are changed. The commissioner shall recommend screening for lead in other high risk groups. The commissioner shall ensure that all health care providers who provide primary medical care to children six years of age or younger are informed of the guidelines. Once the department has implemented lead screening reports within the immunization registry, the department shall use the information in the registry to inform health care providers of their screening rates and to take, within available resources, other measures necessary to optimize screening rates, such as mailings to parents and guardians of children ages one and two, outreach to day care facilities and other community locations, screening at district offices, and educating parents and guardians of children being served.

(b) Annually, the commissioner shall determine the percentage of children six years of age or younger who are being screened in accordance with the guidelines and shall, unless a final report is available, provide interim information on screening to the legislature annually on April 15. If fewer than 85 percent of one-year-olds and fewer than 75 percent of two-year-olds as specified in the guidelines are receiving screening, the secretary shall adopt rules to require that all health care providers who provide primary medical care to young children shall ensure that their patients are screened and tested according to the guidelines, beginning January 1, 2011.

(c) All health care providers who provide primary medical care shall ensure that parents and guardians of children six years of age or younger are advised of the availability and advisability of screening and testing their children for lead in accordance with the commissioner's guidelines. No health care provider shall be liable for not performing a screening or confirmation test for blood lead level when a parent or guardian has refused to consent or has failed to follow through in response to a referral for a screening or confirmation test. No later than 120 days after the department has notified health care providers that it has implemented lead screening re-

ports within the immunization registry, a health care provider shall report to the department regarding lead screening of children ages one and two pursuant to the guidelines in subsection (a) of this section in a form and as required by the department.

(d) Any laboratory that analyzes blood samples of Vermont residents for lead levels shall report to the department all information required by the department. All health care providers who analyze blood samples for lead levels or who use laboratories outside Vermont to analyze blood samples for lead levels shall report all information required by the department to the department immediately by telephone if the result of any analysis is 45 micrograms or more of lead per deciliter of blood, or by electronic means within 14 days of analysis if the result of the analysis is less than 45 micrograms of lead per deciliter of blood. All blood lead data reports to the department shall include the name, date of birth, date of blood test, and address of the individual whose blood is analyzed and, if known, the owner of the residence of the individual.

(e) No later than 120 days after the department has notified laboratories that it has implemented lead screening reports within the immunization registry, a laboratory shall report to the department regarding lead screening of children ages one and two pursuant to the guidelines in subsection (a) of this section in a form and as required by the department.

§ 1756. Annual report

(a) The commissioner shall, at least annually, analyze and summarize all aggregate lead screening and testing information provided by physicians, health care facilities and laboratories and provide this information to all other local and state agencies involved with case management and lead hazard reduction.

(b) The commissioner shall also at least annually provide to the general assembly, the health community, and the general public an analysis and summary of such data and a progress report on the commissioner's efforts to prevent lead poisoning in young children in a format that is easily understandable to nontechnical readers. The report shall include:

- (1) The number and percentage of children under the age of six who have been screened and tested for lead poisoning, and the number found to have lead poisoning at various levels.
- (2) Estimates of the public and private costs incurred since July 1, 1993 to prevent, correct, or treat lead poisoning.
- (3) An analysis of barriers to universal blood screening of children under the age of six years.
- (4) The commissioner's recommendations for action.

§ 1757. Children with elevated blood lead levels

(a) Upon receiving a report that a child has a screening test result of ten or more micrograms of lead per deciliter of blood, or a lower level as determined by the commissioner, the commissioner shall take prompt action to ensure that the child obtains a confirmation test.

(b) If the child has an elevated blood lead level, the commissioner shall provide information on lead hazards to

the parents or guardians of the child.

(c) If a child six years of age or younger has a confirmed blood lead level at or above ten micrograms of lead per deciliter of blood, and if resources permit, the commissioner:

(1) Shall, with the consent of the parent or guardian, provide an inspection of the dwelling occupied by the child or the child care facility the child attends by a state or private lead risk assessor, and develop a plan in consultation with the parents, owner, physician, and others involved with the child to minimize the exposure of the child to lead. The plan developed under this subdivision shall require that any lead hazards identified through the inspection be addressed. The owner of rental target housing or a child care facility shall address those lead hazards within the owner's control, and shall not be required to abate lead hazards if interim controls are effective.

(2) May inspect and evaluate other dwelling units in the building in which the child is living if it is reasonable to believe that a child six years of age or younger occupies, receives care, or otherwise regularly frequents the other dwellings in that building.

(d) Nothing in this section shall be construed to limit the commissioner's authority under any other provision of Vermont law.

§ 1758. Housing registry

(a) The department shall issue certificates to all persons who satisfactorily complete a training program on performing essential maintenance practices for lead-based hazard control and shall compile a list of those persons' names.

(b) If additional funds are appropriated to the department in fiscal year 1998, on or before October 1, 1997, the department of housing and community affairs shall establish and maintain a list of housing units which (1) are lead free or (2) have undergone lead hazard control measures and passed independent dust clearance tests. The registry shall be maintained as a public record.

(c) The department of social and rehabilitation services shall identify all child care facilities in which the owners have completed essential maintenance practices or lead hazard control measures and provide the findings to the department annually.

§ 1759. Essential maintenance practices

(a) Essential maintenance practices (EMP) in rental target housing and child care facilities shall be performed only by a person who has successfully completed an EMP training program approved by the commissioner or a person who works under the direct, on-site supervision of a person who has successfully completed such training. That person shall comply with [section 1760](#) of this title and shall take all reasonable precautions to avoid creating lead hazards during any renovations, remodeling, maintenance, or repair project that disturbs more than one square foot of lead-based paint, pursuant to guidelines issued by the department. The following essential maintenance practices shall be performed in all rental target housing and child care facilities, unless a lead inspector or a lead risk assessor has certified that the property is lead-free:

- (1) Install window well inserts in all windows or protect window wells by another method approved by the department.
 - (2) At least once a year, with the consent of the tenant, and at each change of tenant, perform visual on-site inspection of all interior and exterior painted surfaces and components at the property to identify deteriorated paint.
 - (3) Promptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior or exterior surface located within any area of the dwelling to which access by tenants is not restricted. An owner shall assure that all surfaces are free of deteriorated lead-based paint within 30 days after deteriorated lead-based paint has been visually identified or within 30 days after receipt of a written or oral report of deteriorated lead-based paint from any person including the department, a tenant, or an owner of a child care facility. Because exterior paint repairs cannot be completed in cold weather, any exterior repair work identified after November 1 shall be completed no later than the following May 31 provided that access to surfaces and components with lead hazards and areas directly below the deteriorated surfaces is clearly restricted.
 - (4) If more than one square foot of deteriorated paint is found on any exterior wall surface or fixture not covered by subdivision (3) of this subsection, the owner shall:
 - (A) promptly and safely repair and stabilize the paint and restore the surface; or
 - (B) prohibit access to the area, surface, or fixture to assure that children will not come into contact with the deteriorated lead-based paint.
 - (5) For any outdoor area, annually remove all visible paint chips from the ground on the property.
 - (6) At least once a year, using methods recommended by the department, thoroughly clean all interior horizontal surfaces, except ceilings, in common areas accessible to tenants.
 - (7) At each change of tenant, thoroughly clean all interior horizontal surfaces of the dwelling, except ceilings, using methods recommended by the department.
 - (8) Post, in a prominent place in buildings containing rental target housing units or a child care facility, a notice to occupants emphasizing the importance of promptly reporting deteriorated paint to the owner or to the owner's agent. The notice shall include the name, address, and telephone number of the owner or the owner's agent.
- (b) The owner of rental target housing shall perform all the following:
- (1) File with the department by the due date an EMP compliance statement certifying that the essential maintenance practices have been performed, including all the following:
 - (A) The addresses of the dwellings in which EMP were performed.
 - (B) The dates of completion.

(C) The name of the person who performed the EMP.

(D) A certification of compliance with subdivision (4) of this subsection.

(E) A certification that subdivisions (2) and (3) of this subsection have been or will be complied with within ten days.

(2) File the statement required in subdivision (1) of this subsection with the owners' liability insurance carrier and the department.

(3) Provide a copy of the statement to all tenants with written materials regarding lead hazards approved by the department.

(4) Prior to entering into a lease agreement, provide approved tenants with written materials regarding lead hazards approved by the department, along with a copy of the owner's most recent EMP compliance statement. The written materials approved by the department pursuant to this subdivision shall include information indicating that lead is highly toxic to humans, particularly young children, and may even cause permanent neurological damage.

(c) The owner of the premises of a child care facility shall perform all of the following:

(1) File with the department by the due date an EMP compliance statement certifying that the essential maintenance practices have been performed, including all the following:

(A) The address of the child care facility.

(B) The date of completion of the EMP.

(C) The name of the person who performed the EMP.

(D) A certification that subdivision (2) of this subsection has been or will be complied with within ten days.

(2) File the statement required in subdivision (1) of this subsection with the owner's liability insurance carrier; the department for children and families; and with the tenant of the facility, if any.

(d) An owner who desires an extension of time for filing the EMP compliance statement shall file a written request for an extension from the department no later than ten days before the due date. The department may grant or deny an extension.

§ 1760. Unsafe work practices

(a) All paint in target housing and child care facilities is presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based. Unsafe work practices include the following, unless specifically authorized by permit by the department:

(1) Removing lead-based paint by:

- (A) Open flame burning or torching.
- (B) Use of heat guns operated above 1,100 degrees Fahrenheit.
- (C) Dry scraping.
- (D) Machine sanding or grinding.
- (E) Uncontained hydro-blasting or high-pressure washing.
- (F) Abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust controls.
- (G) Chemical stripping using methylene chloride products.

(2) Failing to employ one or more of the following lead-safe work practices:

- (A) Limiting access to interior and exterior work areas.
- (B) Enclosing interior work areas with plastic sheathing or other effective lead dust barrier.
- (C) Using protective clothing.
- (D) Misting painted surfaces before disturbing paint.
- (E) Wetting paint debris before sweeping to limit dust creation.
- (F) Any other measure required by the department.

(b) No person shall disturb more than one square foot of lead-based paint using unsafe work practices in target housing or in child care facilities.

§ 1760a. Enforcement; administrative order; penalties

<Text of section effective January 1, 2010>

(a) A person who violates [section 1759](#) of this title commits a civil violation and shall be subject to a civil penalty as set forth in this subsection which shall be enforceable by the commissioner in the judicial bureau pursuant to the provisions of chapter 29 of Title 4.

(1) An owner of rental target housing who fails to comply with subdivision 1759(b)(1), (2), and (3) of this title by the due date or an owner of a child care facility who fails to comply with subsection 1759(c) of this title by the due date shall pay a civil penalty of not more than \$50.00 if the owner comes into compliance within 30 days after the due date; otherwise the owner shall pay a civil penalty of not more than \$150.00.

(2) An owner who cannot demonstrate by a preponderance of the evidence that essential maintenance practices were performed by the due date shall pay an additional penalty of not more than \$250.00.

(b) Nothing in this section shall limit the commissioner's authority under any other provisions of law.

§ 1761. Duty of reasonable care; negligence; liability

(a) Owners of target housing and owners of child care facilities shall take reasonable care to prevent exposure to, and the creation of, lead hazards. In an action brought under this section, evidence of actions taken or not taken to satisfy the requirements of this chapter, including performing EMP, may be admissible evidence of reasonable care or negligence.

(b) Any person who suffers an injury proximately caused by an owner's breach of this duty of reasonable care shall have a cause of action to recover damages and for all other appropriate relief.

(c) The owner of target housing or a child care facility shall not be liable to a tenant of the housing or facility in an individual action for habitability under common law or pursuant to chapter 63 of Title 9, chapter 137 of Title 9, chapter 153 of Title 10, or chapter 169 of Title 12 for injury or other relief claimed to be caused by exposure to lead if, during the relevant time period, the owner is in compliance with [section 1759](#) of this title and any of the following, should they exist:

(1) The conditions of a lead risk assessor's certification, pursuant to Vermont regulations for lead control, that all identified lead hazards have been controlled and the housing or facility has passed an independent dust clearance test.

(2) Any plan issued pursuant to [section 1757](#) of this title.

(3) Any assurance of discontinuance, order of the commissioner, or court order regarding lead hazards.

(d) The immunity under subsection (c) of this section shall not be available if:

(1) there was fraud in the certification process; or

(2) the owner violated conditions of the certification; or

(3) the owner created lead hazards during renovation, remodeling, maintenance, or repair after the certification; or

(4) the owner failed to respond in a timely fashion to notification that lead hazards may have recurred on the premises.

(e) A defendant in an action brought under this section or at common law has a right to seek contribution from any other person who may be responsible, in whole or in part, for the child's blood lead level.

(f) Nothing in this section shall be construed to limit the right of the commissioner or any agency or instrumentality of the state of Vermont to seek remedies available under any other provision of Vermont statutory law.

§ 1762. Secured lenders and fiduciaries; liability

(a) A person who holds indicia of ownership in rental target housing or a child care facility furnished by the owner or person in lawful possession, for the primary purpose of assuring repayment of a financial obligation and takes full legal title through foreclosure or deed in lieu of foreclosure or otherwise shall not be liable as an

owner of the property for injury or loss claimed to be caused by exposure to lead of a child on the premises, provided that, on or before the 120th day after the date of possession, the person:

(1) performs essential maintenance practices as required by [section 1759](#) of this title; and

(2) fully discloses to all potential purchasers, operators or tenants of the property any information in the possession of such person or the person's agents, regarding the presence of lead-based paint hazards or a lead-poisoned child on the property and, upon request, provides copies of all written reports on lead-based paint hazards to potential purchasers, operators or tenants.

(b) The immunity provided in subsection (a) of this section shall expire 365 days after the secured lender or fiduciary takes full legal title.

(c) A person who holds legal title to rental target housing or a child care facility as an executor, administrator, trustee or the guardian of the estate of the owner and demonstrates that in that fiduciary capacity does not have either the legal authority or the financial resources to fund capital or major property rehabilitation necessary to conduct essential maintenance practices shall not be personally liable as an owner for injury or loss caused by exposure to lead by a child on the premises. However, nothing in this section shall limit the liability of the trust estate for such claims and those claims may be asserted against the trustee as a fiduciary of the trust estate.

§ 1763. Public financial assistance; rental target housing and child care facilities

Every state agency or instrumentality that makes a commitment to provide public financial assistance for the purchase or rehabilitation of rental target housing or child care facilities shall give priority to projects in which the property is lead free, or lead-based paint hazards have been or will be identified and controlled and have passed or will pass an independent dust clearance test that determines that the property contains no lead-contaminated dust prior to occupancy or use. Priority rental target housing projects may include units occupied by severely lead-poisoned children and units in a building that are likely to contain lead-based paint hazards. For purposes of this section, "public financial assistance" means any grant, loan or allocation of tax credits funded by the state or the federal government, or any of their agencies or instrumentalities.

§ 1764. Lead inspectors; financial responsibility

The commissioner may require that a licensee or an applicant for a license under [section 1752\(d\)](#) of this title provide evidence of ability to properly indemnify a person who suffers damage from lead-based paint activities such as proof of effective liability insurance coverage or a surety bond in an amount to be determined by the commissioner which shall not be less than \$300,000.00. This section shall not restrict or enlarge the liability of any person under any applicable law.

§ 1765. Liability insurance

(a) If the commissioner of banking, insurance, securities, and health care administration determines that lead-based paint hazards have substantially diminished the availability of liability insurance for owners of rental property or child care facilities and that a voluntary market assistance plan will not adequately restore availability, the commissioner shall order liability insurers to provide or continue to provide liability coverage or to parti-

cipate in any other appropriate remedial program as determined by the commissioner, provided the prospective insured is otherwise in compliance with the provisions of this chapter.

(b) A determination pursuant to subsection (a) of this section shall be made by the commissioner after a hearing held in accordance with 3 V.S.A. chapter 25. Upon a finding that emergency action is required to protect the public health, safety or welfare, the commissioner shall issue an appropriate summary order pending completion of administrative proceedings. No order issued under this section may be stayed pending appeal.

§ 1767. Transfer of ownership of target housing; risk assessment; EMP compliance

(a) Prior to the time a purchase and sale agreement for target housing is executed, the seller shall provide the buyer with materials approved by the commissioner, including a lead paint hazard brochure and materials on other lead hazards in housing. The seller shall also provide a disclosure form that shall include any assurance of discontinuance, administrative order, or court order the terms of which are not completed and, if the property is rental target housing, verification that the EMP have been completed and that a current EMP compliance statement has been filed with the department.

(b) At the time of sale of target housing, sellers and other transferors shall provide the buyer or transferee with any materials delineated in subsection (a) of this section not previously disclosed and a lead-safe renovation practices packet approved by the commissioner and shall disclose any assurance of discontinuance, administrative order, or court order not disclosed pursuant to subsection (a) of this section the terms of which are not completed.

(c) No sale of rental target housing, building, or unit may occur if the building or unit is currently the subject of an assurance of discontinuance, administrative order, or court order unless the assurance or order is amended in writing to transfer to the buyer or other transferee all remaining obligations under the assurance or order.

(d) Prior to the time of sale of rental target housing, the real estate agents, sellers, and other transferors of title shall provide the buyer or transferee with information approved by the commissioner explaining EMP obligations.

(e) A buyer or other transferee of title to rental target housing who has purchased or received a building or unit that is not in full compliance with [section 1759](#) of this title shall bring the target housing into compliance with [section 1759](#) of this title within 60 days after the closing. Within the 60-day period, the buyer or transferee may submit a written request for an extension of time for compliance, which the commissioner may grant in writing for a stated period of time for good cause only. Failure to comply with this subsection shall result in a mandatory civil penalty.

(f) This section shall not apply to target housing that has been certified lead-free.

(g) Noncompliance with this section shall not affect marketability of title.

Current through No.3 of First Session of the 2009-2010 session (2009) of the Vermont General Assembly.
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