Impact of Massachusetts Lead Law on Commercial Property Owners

By Christopher P. Yates, Esq.

Do you own multiple-family dwelling units? Are you considering entering the market as an owner? If so, you must be familiar with the Massachusetts Lead Paint Law (Lead Law). The Lead Law is a robust policy designed to protect children. Owners should not attempt to avoid or find shortcuts around its requirements. To the contrary, owners and their agents must be proactive in their efforts to comply with the law.

Compliance by owners and their agents will avoid the cost of significant fines, penalties and costly lawsuits. Owners and agents encountering the Lead Law for the first time should seek counsel to help develop best practices for inspection, abatement, compliance and rental practices.

Quite simply, the Lead Law requires the removal of lead paint hazards in homes built before 1978 where any children under the age of six are living. Considering the fact that a significant portion of real property inventory in Massachusetts was built before 1978, the impact of the law reaches many owners.

The law places a burden on owners which could carry significant costs over time:

- Lead hazards must be removed or covered by a licensed de-leader.
- Rental property owners can be held liable for lead poisoning.
- Rental property owners cannot evict or refuse to rent due to lead paint hazards.
- Property must be lead-free or have been de-leaded prior to rental.
- Penalties for noncompliance are severe and costly for both owners and agents.

The first step for any owner who must comply with the law is to engage the services of a licensed lead inspector to test for lead and record all hazards. To comply with the law, the owner must have lead paint hazards removed or covered by a licensed de-leader. Although there are interim controls available for urgent hazards, such efforts do not relieve the owner of realizing full compliance with the law.

An owner's responsibilities are not limited to lead abatement. Under the Lead Law, an owner cannot evict a tenant or refuse to rent to a person with a child under the age of six or refuse to renew the lease of a pregnant woman because of lead paint. Discrimination is against the law and carries significant penalties. In addition, the property owner can be held liable for the lead poisoning of a child resulting from conditions at the property. An owner who has failed to comply with the law risks substantial exposure to monetary damages.

Agents for owners must also be aware of the Lead Law and fluent in the disclosure requirements for properties built before 1978. An agent is also prohibited from engaging in any conduct that discriminates against a prospective tenant in an effort to sidestep the Lead Law. Most important, the agent must provide a lessee with the full Property Transfer Notification Certification, which is fully completed and signed by the lessor before being submitted to the prospective tenant.

The failure to obey the law, or any effort to evade its requirements, can be costly to both owners and their agents. Not only is there civil liability for lead poisoning of a child, there are also stiff penalties for failing to comply with disclosure requirements. Civil penalties under state law can be up to $1,000. Violations of the federal laws can reach $10,000 and include criminal liability. An agent may also be subject to penalty under the Massachusetts Consumer Protection Act, which provides for triple damages.

The Lead Law need not be an impediment to owners seeking to enter the multi-family rental business. As with any law, compliance is the best practice. **FT**

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