

### California's Health and Safety Code: A New Amendment Makes Lead-Based Paint Abatement a Priority

Prior to a recently-enacted amendment to the California Health and Safety Code, California relied on federal guidelines set out in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Federal Act") to regulate the presence of lead-based paint in residential real property. The Federal Act requires residential property owners to warn prospective tenants and/or buyers of the potential dangers associated with lead-based paint hazards. Specifically, the Federal Act requires property owners to (a) disclose any known lead-based paint hazards to prospective tenants and/or buyers, (b) provide prospective tenants and/or buyers with a lead hazard information pamphlet, (c) provide prospective tenants and/or buyers with available reports concerning lead-based paint hazards on the property, (d) provide prospective tenants and/or buyers with a ten (10) day period to conduct a lead-based paint evaluation, and (e) include specific disclosure language in leases and sales contracts. Nonetheless, the Federal Act specifically states that residential property owners are not required to take action to control or abate lead-based paint hazards.

California's Health and Safety Code has long required residential property owners to maintain habitable rental properties. The Health and Safety Code sets forth a list of certain conditions, the presence of which will result in a building or portion thereof being deemed substandard. Recently, the California legislature amended the Health and Safety Code, effective January 1, 2003, to, among other things, expand the list of prohibited conditions to include the presence of certain lead hazards. Unlike the relatively benign notice provisions contained in the Federal Act, the

newly amended California Health and Safety Code requires residential property owners to take affirmative, corrective action to abate lead hazards.

#### LEAD HAZARDS FALLING WITHIN THE SCOPE OF CALIFORNIA'S HEALTH AND SAFETY CODE

The California Health and Safety Code defines a lead hazard as one or more of the following conditions:

- lead-based paint that is cracking, chipping, peeling or otherwise not intact;
- disturbing lead-based paint without proper containment;
- lead-contaminated dust; or
- lead-contaminated soil.

However, the mere presence of a lead hazard does not automatically render a residential property substandard in violation of the Health and Safety Code. Instead, the presence of a lead hazard will constitute a violation of the Health and Safety Code only if (a) such hazard is likely to endanger public or occupant health, and (b) the total area affected by such hazard measures at least: (i) two (2) square feet if the effected area is in any one interior room or space, (ii) twenty (20) square feet if the effected area is on an exterior surface, or (iii) ten percent (10%) of any small interior or exterior surface area such as a windowsill, baseboard or trim.

Notwithstanding the foregoing, the presence of a lead hazard in concentrations below those levels set forth in (iii) above can still constitute a violation of the Health and Safety Code in certain instances where a person has levels of lead in his or her blood greater than or equal to

ten (10) micrograms per deciliter. Should a lead hazard be present in concentrations sufficient to constitute a violation of the Health and Safety Code, the residential property owner has an affirmative obligation to abate such hazard.

### **ENFORCEMENT OF CALIFORNIA'S HEALTH AND SAFETY CODE**

The Health and Safety Code grants authority to the local building/housing departments and/or the city, county or city and county health departments to enforce the abatement of lead hazards from residential properties. The statute further requires these local agencies to coordinate enforcement activities with other interested agencies in order to avoid unnecessary duplication, and specifically authorizes any of the local agencies to enter into an agreement with the State Department of Health Services regarding enforcement responsibilities.

Should an appropriate enforcement agency determine that a particular building or part thereof contains a lead hazard in violation of the Health and Safety Code, that agency is now required to serve the property owner with notice of the violation. Upon the receipt of a notice of a violation, a residential property owner may choose whether to repair or demolish the building so long as such decision is timely and capable of being, and actually is, accomplished within a reasonable amount of time. However, if the enforcement agency determines that the owner failed to comply with any of those requirements, it may order (or even perform) the vacation, demolition or repair of the building or take any other appropriate action.

The Los Angeles City Council recently approved a pilot program designed to enforce the lead hazard provisions of the Health and Safety Code. This pilot program is expected to begin in August 2003 and will target the 1<sup>st</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> council districts. Under Los Angeles' pilot program, city housing inspectors may use swabs to detect the presence of lead hazards and, in the event a lead hazard is detected, the property owner will be ordered to take affirmative, corrective measures to abate such hazard.

### **CONCLUSION**

It is no longer sufficient for the owners of California residential property to simply warn prospective tenants and/or buyers of the dangers posed by lead hazards. The California Health and Safety Code now obligates the owners of residential property to abate certain lead hazards. In order to ensure compliance with the lead hazard provisions of the Health and Safety Code, various local agencies have been vested with the enforcement power to order the prompt removal of such hazards.

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