



Landlord News

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WITH CERTIFICATION DEADLINE LOOMING IT'S A GOOD TIME TO REVIEW LEAD BASED PAINT REGULATIONS

Since the Environmental Protection Agency's (EPA) certification requirement goes into effect on April 22, 2010, this is a good time to review federal lead-based paint ("LBP") requirements. LBP regulations have evolved over time and apply to targeted housing and child-occupied facilities. First, federal law mandated landlords to disclose information to residents regarding the hazards of lead-based paint. Then LBP regulations required residents to receive information on lead-based paint hazards before renovations were done. Finally, next month, LBP regulations mandate certification for anyone performing renovation work involving LBP. This article

discusses federal LBP requirements. Currently, there are no Colorado or local LBP requirements, but if there were, you would also be responsible for complying with them in addition to the federal requirements.



If you rent targeted housing, general

LBP disclosure regulations apply to you. Targeted housing means any housing constructed prior to 1978. Housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) and 0-bedroom dwelling units are exempt. Rental property found to be lead-based paint free by a certified inspector under a certification program is also exempt, and so are leases for less than 100 days. Lease renewals are exempt if all required information has been previously disclosed, and you are not aware of any new information.

LBP regulations require lessors (including agents) of targeted housing to meet certain requirements.

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WHEN CAN YOU REQUEST A CONSUMER'S CREDIT REPORT?

The Fair Credit Reporting Act (FCRA) limits when consumer-reporting agencies may provide a consumer credit report to third parties such as a landlord, collection agency, or creditor. Consumer credit reports can only be requested if the requestor has a permissible purpose listed under the federal statute.

While there are several permissible purposes, the most pertinent to a landlord/tenant transaction is the "Legitimate Business Need." In order to have a legitimate business need, the credit report must be requested in connection with a business transaction initiated by the consumer OR to review an account to determine whether the consumer continues to meet the terms of the account. The Federal Trade Commission, who enforces the FCRA, issued commentary on the statute that gives an example of a consumer applying to rent an apartment as a legitimate business need. So there is a strong argument that a landlord has a legitimate business need for a consumer credit report. However, be aware that the legitimate business need does not specifically allow for a credit report to be requested after the landlord/tenant relationship ends and the tenant leaves a past due balance for collection.



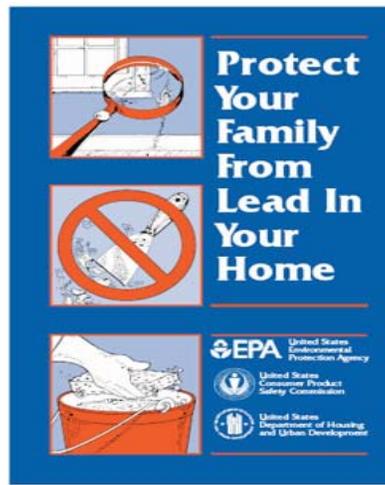
In spite of the FTC commentary stating an application for an apartment constitutes a legitimate business need, federal courts in other parts of the country have decided to limit the meaning of "legitimate business need" to transactions similar to the other listed permissible purposes – meaning that requesting a credit report must be in connection with a credit transaction, employment, professional licensing, insurance or an existing credit obligations. A lease is not a credit transaction or credit obligation, and none of the other choices apply to leases

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You must disclose to prospective residents in writing the presence of any known lead-based paint and/or lead-based paint hazards. You must also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces. You must provide prospects with mandatory warnings regarding LBP, an EPA approved lead hazard information pamphlet, and any available records and reports regarding LBP.

Agents and property managers are responsible for complying with the law, and are legally liable for non-compliance. Targeted housing (rentals) includes both single family and multi-family units. Owners are required to make similar disclosures to any agent or property management company leasing the property for the owner. If any required disclosure takes place after a resident has made an offer to lease, you must complete all disclosures prior to accepting a resident's offer to lease, and allow the resident an opportunity to review the information and to amend their offer to lease.



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You must also provide the resident with any available records or reports pertaining to lead-based paint and/or lead-based paint hazards, including any records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multi-family target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

Leases for targeted housing must contain (either in the body of the lease or by way of an addendum or attachment) specific language (the required disclosures). Disclosures should be handled right up front as part of the application process. If you rent targeted housing, your application should contain the following or similar language. Prior to signing a lease for the apartment, the Landlord is legally required to provide all Prospective Residents with DISCLOSURES OF INFORMATION

ON LEAD-BASED PAINT and/or LEAD-BASED PAINT HAZARDS. Prospective Resident acknowledges that Prospective Resident's application will not be processed until such time that Prospective Resident acknowledges in writing that Prospective Resident has received such disclosures. You should then provide the required disclosures to the prospect with the application, and only process the application after the prospect has returned an executed copy of the disclosures.

Failure to make LBP disclosures can result in significant legal liability. First, if you fail to make the disclosures, the government can prosecute you criminally and fine you. The resident can also sue you. Federal law makes you liable for three times the resident's damages, plus you are liable for the resident's attorneys' fees and costs.



LBP renovation rules apply to all renovations performed for compensation in target housing and child-occupied facilities. Yes, your maintenance staff performs renovations for compensation. The purpose of the renovation rules is to make sure that residents receive LBP information prior to the work being done, and ensure that individuals performing renovations involving LBP are properly trained, certified, and follow applicable work rules.

LBP renovation rules apply to target housing and child occupied facilities. Target housing means pre-1978 housing. Generally, child occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

Unless the renovation qualifies for an exception, on or after April 22, 2010, no company may perform covered renovations without certification from the EPA. All training to obtain certification must be accredited by the EPA. Additionally, all renovations must be performed in accordance with the work practice standards set forth in the regulations.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces. The regulations do

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not define what constitutes "the disturbance of painted surfaces". However, the regulations inclusion of specific jobs indicates that LBP painted surfaces will be disturbed with almost any job. Specifically, renovation includes but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair,



surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted

surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces.

LBP-free renovations as defined by the regulations are exceptions to LBP renovation regulations. Generally, to meet this requirement, you will need a written determination by a certified inspector or risk assessor that the components affected by the renovation are LBP-free. Emergency renovations are also exceptions. Generally, emergency renovations are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

Renovation regulations also do not apply to minor repair and maintenance activities. These activities are defined as activities that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where no prohibited work practices are used and where the work does not involve window replacement or demolition of painted surface areas. Minor repair activity includes minor heating, ventilation or air conditioning work, electrical work, and plumbing, as long as the surface area requirements are not exceeded. Applying the minor repair and maintenance exception can be complicated. You should carefully review the full regulation before assuming the job falls under the minor repair exception.

The LBP renovation regulations also impose record keeping and disclosure requirements. You or firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the regulations for a period of

3 years following completion of any renovation. The 3-year retention requirement does not supersede longer obligations required by state or local law. Currently neither Colorado nor any local jurisdiction has any record keeping requirements.

LBP regulations impose disclosure, notification, and record keeping requirements. While these requirements can vary depending on the type of work, location of work, and whether the work is being done on targeted housing or child occupied facilities, these requirements are generally as follows. You have to provide the residents of the units the pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. The pamphlet must be provided no more than 60 days before beginning renovation activities. Additionally, you must provide proof of delivery of the pamphlet by one of the following methods.

One, obtain from the resident a written acknowledgment that the resident has received the pamphlet. Two, certify in writing that a pamphlet has been delivered to the resident at the unit and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from the resident. If you choose to follow this method, be aware that there are specific requirements for this certification. Three, you can obtain a certificate of mailing at least 7 days prior to the renovation. Finally, you should carefully review notification requirements for common area renovations and child occupied facilities because there are additional requirements.

Similar to violations of general LBP disclosures, the law imposes both criminal and civil fines and penalties for violation of LBP renovation regulations. Because of the complexity of the regulatory requirements, and specifically the work rules, you should strongly consider hiring a qualified professional certified renovator to perform LBP renovations. You should also address the LBP regulations in any renovation contract. Specifically,



all covered LBP renovation contracts should require the contractor to represent that they are currently trained and certified as required by all laws, rules, and regulations to perform LBP renovation work. The contract should also make the contractor responsible for and complying with all LBP renovation requirements. The contract should indemnify and hold you harmless for any and all damage resulting from the contractor's failure to abide with or meet any LBP renovation law or regulation. Finally, you should require the contractor have appropriate insurance to cover any damage for failure to meet such requirements, and verify that such insurance is in full force and effect.

DO YOU EVER WONDER WHY??

Stores make the sick walk all the way to the back of the store to get their prescriptions while healthy people can buy cigarettes at the front.

People order double cheeseburgers, large fries, and a diet coke.

Banks leave both doors open and then chain the pens to the counters.

We leave cars worth thousands of dollars in the driveway and put our useless junk in the garage.

The sun lightens our hair, but darkens our skin.

You don't you ever see the headline 'Psychic Wins Lottery'?

Lemon juice is made with artificial flavor, and dish washing liquid is made with real lemons?

A man who invests all your money is called a broker?

The time of day with the slowest traffic called rush hour?

There isn't mouse-flavored cat food?

Noah did not swat those two mosquitoes?

They sterilize the needle for lethal injections?

If flying is so safe, they call the airport the terminal



WHEN CAN YOU REQUEST A CONSUMER'S CREDIT REPORT? CONTINUED FROM PAGE 1

either. Though the federal court in the District of Colorado has not decided this issue, if a consumer were to sue a landlord for violation of the FCRA, the court could look to these more restrictive interpretations for guidance.

The safest way to obtain a credit report is with written instructions from the consumer. A landlord normally obtains written permission from the tenant



when he or she signs the application. The application should contain a paragraph before the signature line explaining that the signature authorizes the landlord to request a credit report in connection with the application. However, there is some doubt as

to whether an authorization by a consumer to request a credit report at the beginning of a relationship extends to retrieving additional credit reports during the tenancy or after the relationship ends to assist with collection of a debt. To be safe, it is better to include language in the initial credit report authorization that specifically states that the landlord has a right to request additional copies of the consumer's credit report at various points during the relationship and, should a collection become necessary, during collection process.

Obtaining a consumer credit report under false pretenses or knowingly without a permissible purpose from a consumer reporting agency may result in a liability to the consumer reporting agency for actual damages or \$1000.00, whichever is greater.



IMPORTANT HTS MARCH DATES

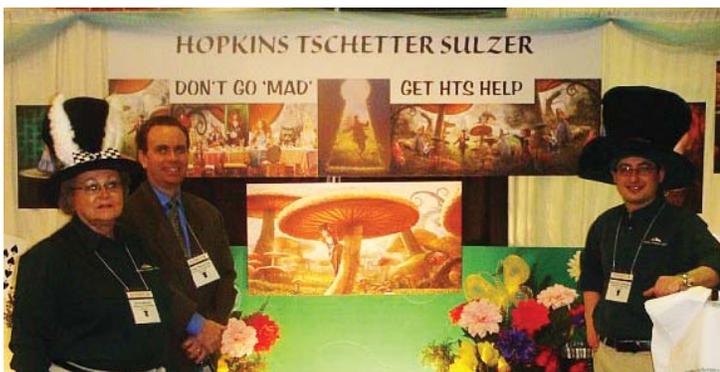
March 10th	Advanced Fair Housing HTS Conference Center 3600 South Yosemite Street Lower Level 8:30 a.m. - Noon
March 18th	Colorado Springs Client Lunch The Ritz Grill 15 South Tejon Colorado Springs, Colorado 11:30 a.m. - 1:00 p.m.
March 19th	North Client Lunch Dave & Busters Westminster, Colorado 11:30 a.m. - 1:00 p.m.

**March 29th DENVER COURTS CLOSED
CESAR CHAVEZ HOLIDAY**

Everyone's Hats Are Off To The AASC

Once again, the annual AASC Educational Conference & Expo was a terrific success. All of the exhibitors and attendees really got into the spirit and fun of this year's theme of "Hats Off To a World of Opportunity". Embracing the conference theme booth decorations were very creative and encompassed every conceivable variation on "hats" that you could imagine. HTS elected to use the 'Mad Hatter' from Alice in Wonderland as the focal point of our hat theme. Utilizing graphic material from the upcoming, soon to be released, Tim Burton Alice in Wonderland movie to decorate our booth, HTS was pleased to receive a First Place Award for our booth for the best of theme at the show.

Sandra Juvera, Regional Manager for Riverstone Residential was the first place winner of the HTS drawing this year. Sandra was the lucky recipient of a Nintendo Wii Video Game and gift card to purchase games. Second place HTS winner was Darce DeWitt, Property Manager of the Widefield Apartments (Vintage Communities) who received a 10.2 inch Audiovox portable DVD player.



Lenka Sarverova and Donna Martin, Champions at Norwood (Riverstone) chat with Vic



Mark & Vic announce prize winners

Tina Luck, Retreat at Cheyenne Mountain (Greystar), Lindsay in her Queen of Hearts Hat, and Alexis Camargo, Garden Terrace Apartments (Greystar)



Tim Herrin, Lincoln Property Company, and Mark check out the HTS Booth



The HTS Team Mark, Vic, Eve (White Rabbit) and Michael (Mad Hatter) with First Place Booth Theme Prize

*“Change is the law of life
and those who look only to the past or present
are certain to miss the future.”*

—John F. Kennedy



Hopkins • Tschetter • Sulzer
Attorneys and Counselors at Law



FED Filing Deadlines - March 2010

All notices received by 10:30am on the date specified will be filed for the corresponding court date.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
1 Court Date: 3/8/10 Adams Denver Douglas El Paso	2 Court Date: 3/9/10 Arapahoe Broomfield Jefferson Weld	3 Court Date: 3/10/10 Adams Denver Douglas	4 Court Date: 3/11/10 Broomfield El Paso Jefferson	5 Court Date: 3/12/10 Adams Arapahoe Boulder Denver Fort Collins Loveland
8 Court Date: 3/15/10 Adams Denver Douglas El Paso	9 Court Date: 3/16/10 Arapahoe Broomfield Jefferson Weld	10 Court Date: 3/17/10 Adams Denver Douglas	11 Court Date: 3/18/10 Broomfield El Paso Jefferson	12 Court Date: 3/19/10 Adams Arapahoe Boulder Denver Fort Collins Loveland
15 Court Date: 3/22/10 Adams Denver Douglas El Paso	16 Court Date: 3/23/10 Arapahoe Broomfield Jefferson Weld	17 Court Date: 3/24/10 Adams Denver Douglas	18 Court Date: 3/25/10 Broomfield El Paso Jefferson	19 Court Date: 3/26/10 Adams Arapahoe Boulder Denver Fort Collins Loveland
22 Court Date: 3/29/10 Adam Douglas El Paso	23 Court Date: 3/30/10 Arapahoe Broomfield Denver (3/31/10) Jefferson Weld	24 Court Date: 3/31/10 Adams Douglas	25 Court Date: 4/1/10 Broomfield Denver (4/2/10) El Paso Jefferson	26 Court Date: 4/2/10 Adams Arapahoe Boulder Denver (4/5/10) Fort Collins Loveland
29 Court Date: 4/5/10 Adams Douglas El Paso	30 Court Date: 4/6/10 Arapahoe Broomfield Jefferson Weld	31 Court Date: 4/7/10 Adams Denver Douglas		