

Rental Housing & Lead Based Paint

Children under the age of six are particularly vulnerable to lead poisoning both because they are more likely to ingest lead in housing situations and because ingested lead can adversely affect the development of children's brains, central nervous systems, and other organ systems. Recent studies have shown that simply breathing dust particles that are in the air because of the opening and closing of lead-based painted windows can be just as hazardous as the "ingestion" of lead paint. The importance of this issue has raised questions concerning lead-based paint and the requirements of the Fair Housing Act to rent to families with children.

So what is a housing provider's responsibility regarding this issue?

First, it is illegal under the Fair Housing Act to not rent to families with children, unless the landlord is otherwise exempt for instance, as housing for older persons. Case law has stated that a landlord cannot discourage a potential tenant or determine for them that a property is safe or unsafe for their children. Examples include: steep stairways, steep balconies, busy streets and the presence of dangerous equipment. Case law has determined that it is up to the parent to determine if a situation is appropriate for their children, not for the landlord to make that determination for them. The presence of lead based paint is a similar situation.

If a unit has not undergone lead hazard control treatments, the housing provider must advise the family of the condition of the unit (see section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992), but may not decline to allow the family to occupy the unit because the family has children. It would also violate the Fair Housing Act for a housing provider to seek to terminate the tenancy of a family residing in a unit where lead-based paint hazards have not been controlled against the family's wishes because of the presence of children in the household.

A housing provider may affirmatively market units where lead-based paint hazards have been removed to families with children. In addition, if a landlord has removed the lead-based paint hazards from certain apartments, those apartments can be set-aside specifically for families with children. It is recommended that if the housing provider plans to use this method, that the units chosen for lead-based paint removal be distributed throughout the complex and not segregated to one building or area of the complex.