

# ***Lead Paint and Mold Liability Issues Facing Commercial Real Estate Owners***

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- I. Childhood Lead Poisoning Prevention Act of 2003 – Local Law 1
  - I.1. Generally
    - I.1.1. Supercedes current local laws pertaining to lead paint
    - I.1.2. Applies to multiple dwellings (3 or more apartments) but not owner occupied condos and coops.
      - I.1.2.1. Presumption that buildings pre-1960 contain lead paint but can rebut or apply for permanent exemption. Applies to buildings 1960-78 if owner knows of lead paint.
  - I.2. Notice Provisions - at least English & Spanish
    - I.2.1. Commencement of Lease/Renewal/Turnover and Annually (1/1-16)
      - I.2.1.1. Inquire Child under 7
      - I.2.1.2. Health Pamphlet
    - I.2.2. Tenant must respond in 21 days or for annual notice by 2/15. Must advise LL if answer changes during year.
    - I.2.3. If no response, LL must inspect for child (2/16-3/1)
    - I.2.4. If no access must notify Department of Health
    - I.2.5. If child present, must inspect for lead hazards.
    - I.2.6. Must notify tenant of inspection results and notify DOH if abatement required.
  - I.3. Lead Hazards – Paint with Lead  $\geq 1\text{mg/cm}^2$  or dust  $\geq 40\mu\text{gms/ft}^2$ 
    - I.3.1. Chewable Surfaces – Interior sills, railings, stairs – anywhere accessible to kids, including closets.

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- I.3.2. Friction Surfaces – Two surfaces contact each other
- I.3.3. Peeling Paint –
- I.3.4. Deteriorated surfaces – *i.e.* rotted or decayed wood
- I.3.5. Impact Surfaces – doorframes, molding, baseboards
- I.4. Inspection – must use EPA certified workers and third parties for dust test and inform tenant of results, DOH if problem.
- I.5. Abatement or Violations – Time Limits, methods, notices specified – must protect tenant.
- I.6. Record Keeping – Must keep all records for 10 years.

## **II. Mold Liability**

### II.1. Biology

- II.1.1. Most common organisms except for perhaps bacteria. They are everywhere all the time.
- II.1.2. Function is to break down organic matter.
- II.1.3. Better than 90% of all molds do not produce mycotoxins *i.e.* “black mold”.
- II.1.4. Better than 90% of mycotoxin producing mold have no proven human health effects, and the ones that do, you have to eat: *e.g.* *Stachybotrys*.
- II.1.5. Live a two part life history in which they are air born until they find a suitable substrate to settle on and multiply, Substrate must be organic and have moisture.

### II.2. Claims

- II.2.1. Most claims come out of one county in Texas and involve new construction – water leaks/property damage is the real problem.
- II.2.2. Personal injury plaintiff must prove:

- II.2.2.1. Chain of custody of sample – requires expert to sample and expert to identify and test and many plaintiffs use asbestos experts who are often inept
- II.2.2.2. Sensitivity to particular mycotoxin – requires expert allergist. Most people do not have allergic reactions.
- II.2.2.3. Causation – requires expert, usually two – toxicologist and medical doctor of particular specialty involved difficult since very little published data,
- II.2.2.4. Damages – many plaintiffs have previous existing conditions – asthma, emphysema – smoking – expert testimony.

### II.3. Summary

- II.3.1. Fix the water leaks.
- II.3.2. Competent contractor- bleach kills mold.