

LEAD-BASED PAINT ADDENDUM TO MEMORANDUM OF SALE

DEAR ATTORNEY:

The Residential Lead-Based Paint Hazard Act of 1992 authorized HUD and the Environmental Protection Agency to create regulations regarding Lead-Based Paint Disclosure. Those regulations became effective on September 6, 1996 for anyone owning more than four residential dwelling units and on December 6, 1996 for owners of one to four residential dwelling units.

The following warning set forth in the Act, must be inserted into every contract for the purchase and sale of residential real property involving non-exempt residential properties referred to as "target housing", which means any housing constructed prior to 1978, except housing for the elderly, or persons with disabilities or any zero-bedroom dwelling. The specific warning language is set forth as follows:

(Section 4852d(a)(3))

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

The regulations promulgated in the Federal Register on Wednesday, March 6, 1996 include sample contract contingency language. The following paragraph (or one similar to it) should be included in each contract prepared by an attorney:

"This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the purchaser's expense until 9:00 P.M. on the 10th calendar day after the date of this contract. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA Pamphlet "Protect Your Family From Lead In Your Home" for more

information). This contingency will terminate at the above pre-determined deadline unless the purchaser (or purchaser's agent) delivers to the seller (or seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The seller may, at the seller's option, within five days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to closing. If the seller will correct the condition, the seller shall furnish the purchaser with a certification from a risk assessor or inspection demonstrating that the condition has been remedied before the closing date. If the seller does not elect to make the repairs, or if the seller makes a counter-offer, the purchaser shall have three (3) days to respond to the counter-offer to remove this contingency and take the property in "as is" condition or this contract shall become void. The purchaser may remove this contingency at any time without cause."

Section 4852d(a)(4) requires that brokers involved in transactions assure compliance with Title X:

" (4) Compliance Assurance. Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this Section shall require the agent, on behalf of the seller or lessor, to insure compliance with the requirements of this Section."

Please note that Section 3992 of the Regulations requires that:

"... any agent, shall retain a copy of the completed attachment or lease contract containing the information required under... this Section for no less than three (3) years. "

In order to document compliance by REALTORS with the Regulations, you are requested to provide a copy of the fully executed contract to the brokers involved in the transaction.

PREPARED AS A COURTESY OF THE
WESTCHESTER COUNTY BOARD OF REALTORS, INC.
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