



Iowa Department of Public Health

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DATE: June 17, 2002

TO: Licensed Real Estate Agents
Landlords
Property Managers
State and Local Housing Officials

FROM: Rita Gergely, Director
Lead Poisoning Prevention Programs

RE: **THE FINAL EPA/HUD RULE ON REAL ESTATE DISCLOSURE
REGARDING LEAD-BASED PAINT
(24 CFR PART 35 AND 40 CFR PART 745)**

I am writing to provide information about the final EPA/HUD rule on real estate disclosure regarding lead-based paint and Iowa's role in the implementation of this rule. If you have any questions about the enclosed information, please contact our Lead Poisoning Prevention Program at 1-800-972-2026. We will do our best to answer your questions. If we cannot answer your questions, we will get the answer or refer you to the federal agency that can best answer your questions.

SUMMARY

Since the fall of 1996, regulations from the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) have required that most home buyers and renters receive known information on lead-based paint and lead-based paint hazards during sales and rentals of housing built before 1978. Buyers and renters must receive specific information on lead-based paint in the housing as well as a Federal pamphlet or Federally-approved state pamphlet with practical, low-cost tips on identifying and controlling lead-based paint hazards. Sellers, landlords, and their agents are responsible for providing this information to the buyer or renter before sale and lease.

WHAT IS REQUIRED

Housing Covered by the Rule

This rule applies to target housing. Target housing is any housing built prior to 1978, except housing for the elderly or persons with disabilities (unless a child under age 6 resides or is expected to reside in the housing) or any 0-bedroom dwelling (living area not separated from sleeping area--includes efficiencies, studio apartments, dormitory housing, military barracks, rentals of individual rooms in residential dwellings).

Promoting and protecting the health of Iowans

This rule applies to all transactions to sell or lease target housing, including subleases, verbal leases, and month-to-month leases, with the following exceptions:

- A. Sales of target housing at foreclosure.
- B. Leases of target housing where the housing has been found to be lead-based paint free. An inspection to determine that housing is "lead-based paint free" must be conducted by an inspector certified by the state of Iowa according to procedures specified in Iowa regulations.

Sales of target housing cannot be exempted through this "lead-based paint free" inspection.

- C. Short-term leases of 100 days or less where no lease renewal or extension can occur.
- D. Renewals of existing leases in target housing where the required disclosure has already been completed and the lessor has no additional information regarding the existence of lead-based paint or lead-based paint hazards in the dwelling. Renewal of existing leases where this disclosure has not taken place are subject to this rule.

Effective Dates of the Rule

This rule became effective on September 6, 1996, for owners of more than four residential dwellings. This rule became effective on December 6, 1996, for owners of one to four residential dwellings.

Requirements for Sale of Target Housing

The only sales of target housing that are exempt are sales at foreclosure and sales of rental housing for the elderly or disabled or rental housing consisting entirely of 0-bedroom units.

For sales of target housing, the following must be completed before the purchaser is obligated under any contract to purchase target housing:

1. The seller must provide the purchaser with an EPA-approved lead hazard information pamphlet. This can be the standard EPA pamphlet, *Protect Your Family from Lead in Your Home*, or a state pamphlet approved by EPA. (Iowa is trying to get a state pamphlet approved for this purpose.)
2. The seller must disclose the presence of any known lead-based paint and/or lead-based paint hazards in the housing to the agent and to the purchaser. They must also disclose any specific knowledge that they have, such as how they know that lead-based paint is on any surfaces, the location of the lead-based paint, and the conditions of the surfaces on which it is located. The seller must disclose the existence of any available records or reports regarding lead-based paint or lead-based paint hazards to the agent. The seller must provide the purchaser with any

records or reports regarding lead-based paint or lead-based paint in the housing. This includes records and reports regarding lead-based paint or lead-based paint hazards in common areas and in other residential dwellings in multi-family housing if such information is part of a report on the overall building.

If any of the required disclosure does not occur until after the purchaser has placed an offer to buy, the seller must complete the required disclosure prior to accepting the offer and must allow the purchaser an opportunity to review the information and possibly amend the offer.

Before a purchaser is obligated under a sales contract, the seller must permit the purchaser a 10-day period to conduct a risk assessment or inspection for lead-based paint or lead-based paint hazards. The seller and purchaser can mutually agree in writing to a different time period. The purchaser may waive the opportunity to conduct a risk assessment or inspection in writing.

Each contract to sell target housing must include an attachment with each of the following items:

- A. A Lead Warning Statement that is specified in the rule and shown on the enclosed sample forms.
- B. A statement disclosing the Items #1 and #2 listed above.
- C. A list of any records or reports regarding lead-based paint or lead-based paint in the housing that have been provided to the purchaser. If no such records or reports are available, the seller must indicate this.
- D. A statement by the purchaser that they have received the lead hazard information pamphlet and the information in items B and C above.
- E. A statement by the purchaser that they have had the opportunity to conduct a risk assessment or inspection or waived the opportunity.
- F. When an agent is involved on behalf of the seller, a statement that the agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d (Title 10 and this rule) and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.
- G. The signatures of the sellers, agents, and purchasers certifying the accuracy of their statements and the dates of signature.

The agent must inform the seller of his/her obligations under this rule and either ensure that the seller complies with these rules or personally ensure compliance with these rules. If the agent has informed the seller of his/her obligations, but the seller does not disclose known lead-based paint or hazards as required to the agent, then the agent shall not be liable for the failure of the seller to disclose known lead-based paint or hazards to the purchaser.

Requirements for Leasing Target Housing

For leasing target housing, the requirements are the same as for purchasing target housing except that the lessee does not have the opportunity to conduct an inspection or risk assessment. Similarly, the contract for leasing does not need to contain the statement regarding the inspection or risk assessment.

Filling Out the Form

If you choose to use the attached sample forms that were developed by the U.S. EPA, here are some tips on filling them out correctly.

1. The seller or the lessor **MUST** check either (i) or (ii) under (a). If an inspection has ever been done that shows the presence of lead-based paint and/or lead-based paint hazards, you check (i) and explain briefly what was found. If an inspection has not been done, you should check (ii) to indicate that you have no knowledge of lead-based paint or lead-based paint hazards in the property.
2. Next, the seller or lessor **MUST** check either (i) or (ii) under (b). If you have a copy of the inspection report and provided it to the purchaser or lessee, check (i). If you do not have a copy of an inspection report (this includes the situation where an inspection has never been done), you should check (ii).
3. The purchaser or lessee must now initial both (c) and (d) to indicate that they received copies of any information listed under (a) and that they received a copy of the federal pamphlet.
4. In the case of a purchase only, the purchaser must check either (i) or (ii) under (e) to indicate that they have received the opportunity to conduct a risk assessment or inspection or that they have waived this opportunity.
5. If an agent is involved, the agent must initial under the Agent's Acknowledgment. This is item (e) on the rental form and item (f) on the purchase form.
6. At the bottom of the form, the lessor or seller, the purchaser or lessee, and all agents involved in the transaction must sign and date the form.

It is extremely important that you fill out the form correctly as the U.S. EPA may consider any missing check marks, initials, signatures, and dates to be violations of the regulations.

Record Retention

The seller, the lessor, and the agent must retain all records for at least three years from the completion date of the sale or the commencement of the leasing period, whichever is applicable.

ENFORCEMENT

This rule is being enforced in Iowa by EPA Region VII, Kansas City.

DISCLOSURE FORMS

Sample disclosure forms developed by the U.S. EPA are included in this mailing.

COPIES OF THE FINAL RULE

A copy of the final rule can be obtained by calling the National Lead Information Clearinghouse (NLIC) at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired.

COPIES OF THE PAMPHLET

EPA has approved the Iowa Department of Public Health (IDPH) brochure for use in complying with this rule. Call the Iowa Department of Public Health at 1-800-972-2026 to get free copies of this brochure.

You can obtain a single copy of the Federal pamphlet, Protect Your Family from Lead in Your Home, from the National Lead Information Center as shown above. Bulk copies of the pamphlet are available from the Government Printing Office (GPO) at (202) 512-1800. Refer to the complete title or GPO stock number 055-000-00507-9. The price is \$26.00 for a pack of 50 copies. Alternatively, persons may reproduce the pamphlet, for use or distribution, if the text and graphics are reproduced in full. Camera-ready copies of the pamphlet are available from the National Lead Information Clearinghouse as described above.

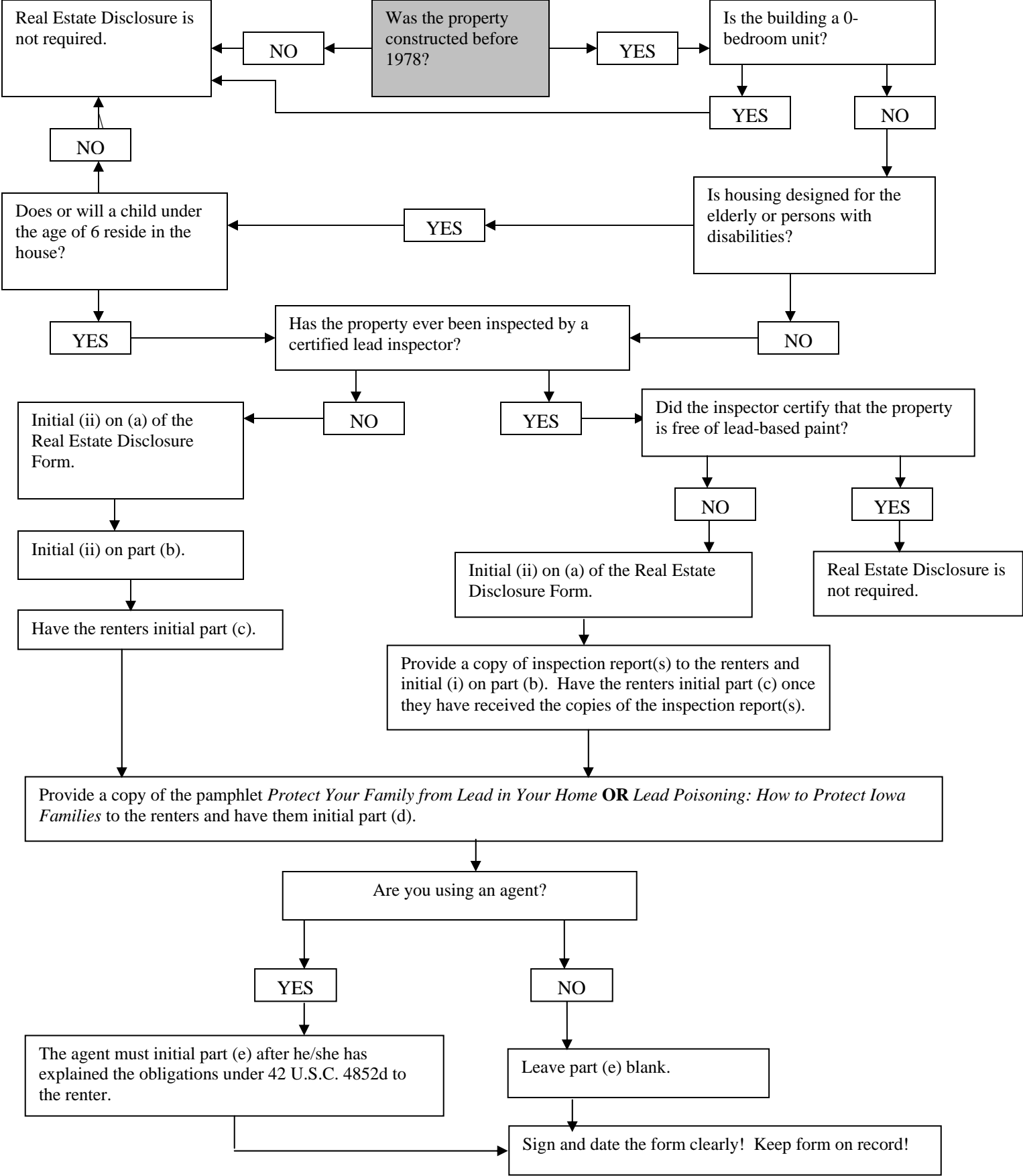
ELECTRONIC INFORMATION

The EPA pamphlet and rule are available electronically and may be accessed through the Internet at either of the following sites:

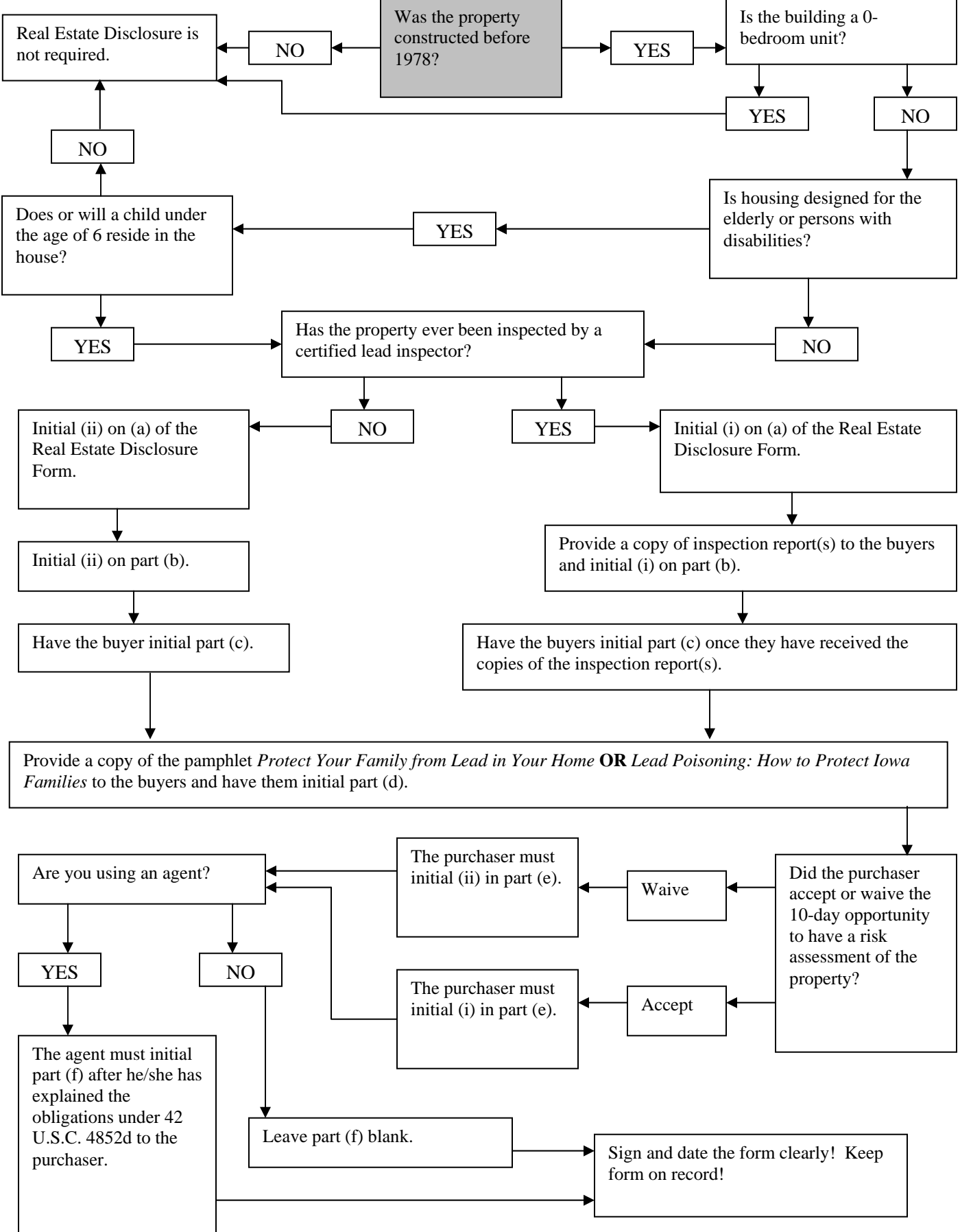
www.epa.gov/lead/leadbase.htm

www.hud.gov/lea/leadhelp.html

Real Estate Disclosure Flow Chart for Property Rental



Real Estate Disclosure Flow Chart for Home Purchase



Home Purchase -- Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

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.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

Name of Document(s) Inspector/Author Date of Document

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Signature of Seller Date

Printed Name of Seller

Signature of Purchaser Date

Printed name of Purchaser

Signature of Agent Date

Printed name of Agent

Signature of Seller Date

Printed Name of Seller

Signature of Purchaser Date

Printed Name of Purchaser

Signature of Agent Date

Printed Name of Agent

