

## Lead-Safe Practices

From: [Remodeling magazine February 2010](#)

Posted on: February 10, 2010

BY LAW

# Five Things Most Contractors Don't Know About the New Lead Paint Laws

By: [D. S. Berenson](#)

[Related Articles](#)

[Save / Share](#)

Based on construction lawyer D.S. Berenson's hundreds of discussions with home improvement contractors concerned about lead-paint laws, these five questions are most common:

### **Do I need to start testing for lead paint on April 22, 2010?**

No. You probably need to start testing for lead paint much sooner. The lead paint guillotine falls on April 22, 2010, which means that any jobs you have in progress (sold, pending installation, installation in process, etc.) are automatically subject to the new laws on that date.

### **Does my company need to be registered with the Environmental Protection Agency as a renovation firm?**

Yes. And do it now — the EPA can run up to a 90-day delay on approvals — if you are going to perform remodeling or home improvement work on houses built before 1978. The application is easy to fill out; the fee is \$300, and registration is good for five years before it needs to be renewed. For a copy of the application, [click here](#).

### **Should my installer be registered with the EPA as a renovation firm?**

Yes, if your installers are being treated as independent contractors. We suggest that anyone performing remodeling on houses built before 1978 (assuming they end up working on lead-paint surfaces) should be registered as a "renovation firm." The law does not distinguish if the person or entity performing the remodeling work has been hired by the consumer or by a general contractor.

### **Can I tell before I visit the house if there is lead paint?**

Yes, to a certain degree. If you can determine that the house was built after 1977, then you know that there is no lead paint to be concerned about. You may want to review [HouseAgeCheck.com](#), a national database of public and private "year-built" information. A contractor can submit addresses to HouseAgeCheck.com in an electronic format and the addresses are then researched and coded by color to indicate if the home is pre-1978. Turn-around time is usually a few hours, and the submitted information is strictly confidential. [Johanson Berenson LLP is affiliated with the industry trade association that operates this website.]

You may also want to check county records — land records, tax assessments — online. Often, this information will show the year that a house was built. However, some jurisdictions do not provide this information or certain counties may be missing from the state's public database. Moreover, the records available are often difficult to read and are only from the past 20 years, when states first began scanning and computerizing land records.

Make sure to keep proof of the year-built information — relying on what the customer may have told your sales representative is not sufficient evidence to defend a future EPA audit or lawsuit.

### **Will siding work trigger the lead paint laws?**

No, not always. Traditional, so-called "layover siding," where siding is applied over an existing wall or painted surface through the use of fastening devices (nails, screws, etc.) is not going to be considered to be a renovation under the lead paint laws and in itself is not going to trigger the need for lead-safe work practices. However, if the subsurface or wall is being modified or removed prior to the siding being applied, or the work is disturbing soffit or fascia, then you do need to treat the job as subject to the lead paint laws.

### **Author's Response**

I appreciate all the comments I've received regarding this article and am heartened to see many in our industry taking a serious interest in this. I do have to suggest that some of what I see in the comments is not legally correct, and that even those experienced in handling lead paint abatement work in years prior consider speaking with experienced counsel on this topic.

**ABATEMENT Vs. RENOVATION.** Remember, we are not talking about abatement work, only renovation work, and under EPA guidelines (which in some cases are being modified at the state level) we are not responsible for abating or encapsulating or remediating the lead at the home or at the job site. Our responsibility goes to handling and containing the dust and debris from our activities.

**NUMBER OF CERTIFIED RENOVATORS NEEDED.** Any job being performed with lead safe work practices will require the supervision of a Certified Renovator. The Certified Renovator needs to conduct certain pre-install and post-install lead-safe work practices personally and be available for consultation to the trained workers on the job as well.

In many cases it will be easier for the Certified Renovator to simply remain on-site throughout the entire job, but in larger jobs or design-build jobs, the Certified Renovator may only be present at the start and clean-up of the job site. How many Certified Renovators a company needs will depend entirely on the number and location of jobs requiring lead safe work practices.

**TESTING OR NOT TESTING.** There are various issues that each contractor needs to consider when making that decision. Some contractors are performing lead-safe work practices on any pre-1978 home, unless they can match the job to an exemption or obtain an opt-out waiver. Depending on the product, job scope, and pricing of the job, that is fine. Other contractors are asking, "Why would I perform lead safe work practices on a large job if I don't have to? I might as well test, I need to pull out the windows anyway . . ."

**AVOIDING THE TEST** so that the homeowner does not have to disclose to a future buyer the issue of lead paint. This concern is overstated. Very quickly, all home inspectors will be

testing for lead paint, and federal law already requires lead paint disclosures and inspection periods be provided by a seller to any buyer of a pre-'78 home. I do not believe the additional disclosure noting lead paint was located at a job site within the home is going to be material in regard to a buyer receiving the other disclosures regarding lead paint and the inspection period already required by federal law.

— D.S. Berenson

*—D.S. Berenson is the Washington, D.C., managing partner of Johanson Berenson LLP (<http://www.homeimprovementlaw.com/>), a national law firm specializing in the representation of contractors and the home improvement industry. He may be contacted at 703.759.1055 or [info@johansonberenson.com](mailto:info@johansonberenson.com).*

This article is for informational purposes only and should not be construed as legal advice.

*This is a longer version of an article that appeared in the February 2010 issue of REMODELING.*