INTRODUCTION

The Department of Housing and Urban Development ("HUD") and the Environmental Protection Agency ("EPA") recently issued Regulations to implement Title X ("Title Ten") of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

In general, the Title X Regulations have three goals: (1) to provide potential purchasers and tenants with full disclosure of existing lead-based paint hazards; (2) to place whatever documentary information the seller possesses and controls into the hands of potential purchasers and tenants; and (3) to provide potential purchasers with an opportunity to inspect the property.

A listing of other sources of information on lead poisoning prevention is attached to this Legal Alert.

WHAT HOUSING IS AFFECTED BY THE TITLE X REGULATIONS?

There are two separate effective dates for the Title X Regulations. On September 6, 1996 the Title X Regulations took effect for any seller or landlord who owns more than four dwellings. On December 6, 1996 the Title X Regulations took effect for any seller or landlord who owns four or fewer dwellings. "Dwelling" includes the attached structures of a single-family house (such as porches and stoops). "Dwelling" also includes a single-family unit in a building that contains more than one separate unit. A three family house, for example, contains three "dwellings" according to the Title X Regulations.

The Title X Regulations apply to so-called "target housing." The Title X Regulations define "target housing" to be any housing constructed prior to 1978. There are exclusions from the definition of "target housing." Obviously, housing constructed after 1978 is excluded. Also excluded are leases for less than 100 days, housing for the elderly and handicapped, (unless a child under age 6 resides or is expected to reside in such housing), zero bedroom housing (such as an efficiency apartment, studio apartment, dormitory housing, etc.) and foreclosure sales. Also excluded is rental housing certified "lead-free" by a certified inspector. The federal government is currently developing a federal certification for lead inspectors. Until such time as the federal certification is developed, inspectors who are qualified under an existing state program and using state-approved methods are considered qualified for purposes of the Title X Regulations. The Connecticut Department of Health maintains a listing of licensed lead inspectors and abatement contractors. There are rules excluding leases of less than 100 days. The 100 day limit must be established in advance. Month-to-month leases are considered in excess of 100 days. A renewal of an existing lease is not considered a new lease requiring compliance with the Title X Regulations if compliance was done at the time the original lease was made.

Please note that although the Title X Regulations apply only to "target housing" as defined above, Connecticut's Property Condition Disclosure Law, which applies to most one to four family housing,
requires disclosure of the presence of lead-based paint and/or lead-based paint hazards and lead plumbing. Therefore, compliance with the notification requirements under Title X does not mean that the questions concerning lead on Connecticut's Property Condition Disclosure Form (Questions #32 and #33) can be ignored.

**WHAT ARE THE COMPONENTS OF FULL DISCLOSURE?**

The Title X Regulations establish what constitutes "full disclosure" as required by the Title X Regulations. The components are as follows:

1. The prospective purchaser or tenant must be provided with a copy of the booklet entitled "Protect Your Family from Lead in Your Home."

2. The seller or landlord must provide the prospective purchaser or tenant with information concerning the known presence of lead-based paint and/or lead-based paint hazards before the purchaser or tenant becomes obligated on a contract or lease. "Lead-based paint" is defined in the Title X Regulations as "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight." A "lead-based paint hazard" is "any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects . . ." Note that the mere presence of lead-based paint must be disclosed. Sellers and landlords will be held to an "actual knowledge" standard. In other words, sellers and landlords will not be required to investigate whether lead-based paint and/or lead-based paint hazards exist but must disclose what they actually know about the presence of lead-based paint and/or lead-based paint hazards.

In addition, the seller or landlord must turn over any records or reports of the presence of lead-based paint or lead-based paint hazards to the prospective purchaser or tenant before the purchaser or tenant becomes obligated on a contract or lease. The seller or landlord must do this if the records or reports are "available." "Available" includes records or reports which are not in the seller's or landlord's possession, but which are reasonably available to the seller or landlord. For example, if a seller or landlord had previously engaged a lead inspector who had records or reports concerning the presence of lead-based paint or lead-based paint hazards, the seller or landlord must secure copies of those records or reports from the inspector if the seller or landlord does not have the records and reports in his or her possession in order to provide the records and reports to the purchaser.

3. The prospective purchaser or tenant must be presented with a Lead Warning Statement and an acknowledgment before the purchaser or tenant becomes obligated on a contract or lease. There are certain elements to the Lead Warning Statement and the elements differ slightly between purchases and leases.

In a purchase, the Lead Warning Statement must contain the following: (1) mandatory lead warning language; (2) a statement disclosing the presence of lead-based paint or lead-based paint hazards or indicating no knowledge of such hazards; (3) the purchaser's affirmation of the purchaser's receipt of the disclosure statement mentioned above; (4) a statement that the purchaser has had an opportunity to perform an inspection or risk assessment before becoming obligated to purchase the property; (5) the agent's statement that the agent has informed the seller of the seller's obligation under law to disclose and that the agent is aware of the agent's duty to ensure compliance; and (6) the signatures of the agent, purchaser, and seller.

In a lease situation, the Lead Warning Statement must contain all of the elements set forth above for purchases with the exception of the opportunity to perform an inspection or risk assessment.

For purchases, the Lead Warning Statement is attached to the contract. In those areas of Connecticut where the attorneys draft the contract, the seller or the agents should see that a copy of the Lead Warning Statement that is signed by the seller, purchaser and agents is transmitted to the attorney drafting the contract so the Statement can be attached to the contract. For leases, the same procedures should be followed if there is a written lease. The seller (or
landlord) and the agent must keep a copy of the Lead Warning Statement for three years from the date of closing or the date of the commencement of the lease.

WHAT ARE THE INSPECTION PERIODS?

As set forth above, the potential purchaser must have an opportunity to perform an inspection or risk assessment before becoming obligated to purchase the property. The Regulations establishes a basic ten day period in which to perform this inspection or risk assessment, but this ten day period may be shortened or lengthened by mutual agreement of the seller and the purchaser. A risk assessment is defined in the Title X Regulations as an on-site investigation to determine and report the existence, nature, severity and location of the lead-based paint hazards including information gathering regarding the age and history of the housing and occupancy by children under six, visual inspection, limited wipe sampling or other environmental sampling techniques, other activities as may be appropriate and provision of a report explaining the results of the investigation. Thus, a risk assessment is a more detailed procedure than an inspection of the property.

The Title X Regulations require that this inspection period for purchases be included as a contingency in the contract. Suggested language for such a contingency is set forth in the Title X Regulations and has been reproduced as an attachment to this Legal Alert. There is a shortened version of a lead inspection period contingency that CAR has developed which is also attached to this Legal Alert.

A seller may not refuse a contract of sale if there is a contingency for a lead-based paint inspection or risk assessment; however, the Title X Regulations themselves do not obligate the seller to remediate lead-based paint present on the property (or lead-based paint hazards). The seller's obligation to remediate is to be determined by state law or the results of negotiations between the parties. Connecticut Regulations require the management or abatement of toxic levels of lead by the property owner if a child under the age of six resides on the property.

WHO BENEFITS?

Both purchasers and tenants benefit from the Title X Regulations. The booklets, disclosures, records and reports which have been mentioned above must be provided to the purchaser or tenant before the purchaser or tenant becomes obligated on a contract or lease. The seller or landlord need not provide disclosure to every prospective purchaser or tenant who shows interest in a property. However, the booklets, disclosures, records and reports must be presented to the prospective purchaser or tenant prior to the prospective purchaser or tenant becoming obligated on a contract or lease.

WHAT ARE THE PENALTIES FOR FAILING TO DISCLOSE?

Failure to comply with the Title X Regulations does not create a title defect or void a contract or lease. This does not mean that penalties for non-compliance are light. Either HUD or EPA may levy a civil penalty of $10,000 per violation. HUD has stated that its enforcement policy will be to issue notices of warning without penalties. The notice will advise persons that they are out of compliance; provide an opportunity to come into compliance; and maintain provisions that will ensure that willful and repeat violators are appropriately penalized. The EPA, which has joint jurisdiction with HUD to enforce the Title X Regulations, is developing its own enforcement policy. EPA is not bound by HUD’s enforcement policy and may adopt a different policy. In addition to civil penalties, both HUD and EPA have criminal sanctions available for willful and repeat offenders. Finally, prospective purchasers and tenants themselves may sue violators for up to three times the actual damages suffered.

THIS ALERT IS INTENDED FOR GENERAL INFORMATION PURPOSES AND IS NOT INTENDED TO PROVIDE LEGAL ADVICE ON ANY SPECIFIC FACTS. IF YOU HAVE SPECIFIC QUESTIONS CONCERNING YOUR OWN SITUATION, PLEASE CONSULT YOUR ATTORNEY.
SOURCES OF INFORMATION ON LEAD

   Suite 1101, 111 Founders Plaza, East Hartford, CT 06108
   (800) 335-4862

2. Protect Your Family from Lead in Your Home pamphlet can be downloaded in PDF Format in English or Spanish:

   World Wide Web:
   http://www.epa.gov/lead/pubs/leadpdfe.pdf English
   http://www.epa.gov/lead/pubs/leadpdfs.pdf Spanish
   http://www.hud.gov Under “Resources”- click on “Handbooks/forms”; then click on "Forms"; then click on "HUD forms" - Type “lead” for a listing of available documents

4. Connecticut Department of Public Health
   410 Capitol Avenue
   Hartford, CT 06134
   (860) 509-8000

   The Department maintains a List of Connecticut Licensed Lead Inspectors and Abatement Contractors

5. National Lead Information Center
   World Wide Web: http://www.epa.gov/lead/pubs/nlic.htm
   1-800-424-LEAD (5323)

6. Reducing Lead Hazards When Remodeling Your Home - Helpful pamphlet for remodelers
   National Association of REALTORS®
   430 N. Michigan Avenue
   Chicago, IL 60611

7. U.S. Department of Housing and Urban Development - Office of Lead Hazard Control
   Information on lead regulations, outreach efforts, and lead hazard control and research grant programs.
   451 7th Street, SW,
   Washington D.C. 20410
   (202) 708-1112