

poisonous gas that results from incomplete burning of fuels such as natural gas, propane, oil, wood, coal, and gasoline. Each year many people die from accidental CO poisoning and thousands more are injured. This law was passed to protect all of us from the dangers of carbon monoxide poisoning.

How Can I Tell If a CO Alarm Is Approved?

CO alarms are approved by an independent testing company such as Underwriters' Laboratories (UL), Underwriter's Laboratory of Canada (ULC), or International Approval Service/Canadian Standards Association (IAS/CSSA). Be sure to look for the approval label when buying CO alarms. Most of the CO alarms currently sold in the Commonwealth meet these standards but it is a good idea to check and make sure they meet the standard before you purchase the alarms.

How Do I Meet the Requirements of the Law?

If you install CO alarms on every habitable level by March 31, 2006 and keep them in good working order you don't have to do anything else to be in compliance with the law. When you sell your home, you must have an inspection and certificate from the local fire department before the sale is final. Contact your local fire department directly - they will know what to do to assist you.

They include:

- Headache
- Fatigue
- Shortness of breath
- Nausea
- Dizziness

If you think you have symptoms of carbon monoxide poisoning or your CO alarm is sounding, contact your fire department and leave the building immediately.

For more information about the requirements of the law contact your local fire department or visit the Massachusetts Department of Fire Services website at www.mass.gov/dfs.

Consumer's Guide

to Massachusetts Requirements for

Carbon Monoxide Alarms



PRESENTED BY:
Department of Fire Services
P.O. Box 1025, Slow, MA 01775
P.O. Box 389, Northampton, MA 01060
www.mass.gov/dfs

CONSUMER'S GUIDE TO MASSACHUSETTS REQUIREMENTS FOR CARBON MONOXIDE ALARMS

In November 2005, Governor Mitt Romney signed "Nicole's Law" which places certain requirements on owners of all residential properties to install and maintain carbon monoxide (CO) alarms. The Board of Fire Prevention Regulations has developed the regulations (527 CMR 31.00) establishing the specific requirements of the law including the type, location, maintenance and inspection requirements for the alarms.

Who Is Impacted by this Law?

Generally speaking anyone who owns residential property regardless of size (i.e., 1- & 2-family homes, multi-family buildings, apartments, condominiums and townhouses, etc.) that contains fossil burning fuel equipment (i.e., oil, gas, wood, coal, etc.) OR contains enclosed parking (i.e., attached or enclosed garage) in Massachusetts, is required to install CO alarms by March 31, 2006. In certain limited instances (see below), the installation requirements are deferred until January 1, 2007.

What Do I Have to Do?

Install CO alarms on every level of your home except for basements and attics that do not have habitable living spaces (i.e., family rooms, dens, etc.) by March 31, 2006.

What Kinds of CO Alarms Are Allowed?

There are several types of alarms that are allowed; they include:

- Battery powered with battery monitoring;
- Plug-in (AC powered) units with battery backup;

- AC primary power (hard-wired – usually involves hiring an electrician) with battery backup;
- Low-voltage or wireless alarms; and
- Qualified combination smoke detectors and CO alarms.

What Are Qualified Combination Detectors and Alarms?

Acceptable combination smoke detectors and carbon monoxide alarms must have simulated voice and tone alarms that clearly distinguish between the two types of emergencies. If you have questions about various types of smoke detectors, contact your local fire department.

What Am I Required to Do if I'm a Landlord?

Landlords must install CO alarms in each dwelling unit. Landlords also must inspect, test and maintain the CO alarms at least once a year or at the beginning of any rental period (such as lease renewal). Batteries are required to be replaced once a year. Tenants should report any problems with alarms to the landlord immediately and learn to recognize the difference between the smoke detector and the carbon monoxide alarm.

What Are Alternative Compliance Options?

The regulation allows for alternative compliance options that may be more practical for larger buildings with multiple dwelling units that contain minimal or no sources of CO inside the individual units. The option allows owners to target the CO alarm protection in only those areas

(i.e., rooms that contain boilers, hot water heaters, central laundry areas and all adjacent spaces, in addition to enclosed parking areas) that could be potential sources of the CO. This CO protection option requires hard-wiring or low-voltage wiring, monitoring (i.e., by an alarm company) and certain signal transmission requirements.

What Are the Limited Instances Where I Don't Have to Install CO Alarms until January 1, 2007?

Owners of residential buildings that notify the local fire department and choose the alternative compliance option and buildings owned by the Commonwealth of Massachusetts (i.e., public housing units) will not be required to install CO alarms until January 1, 2007.

Where Do I Have To Put These CO Alarms?

In most residences, carbon monoxide alarms are required to be located on every level of a home or dwelling unit including habitable portions of basements and attics. On levels with sleeping areas the alarms must be placed within ten feet of the bedroom doors.

CO alarms do not go inside garages, but in the adjacent living areas.

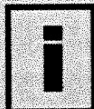
When Do I Have to Install CO Alarms?

Most residences are required to install CO alarms by March 31, 2006. After that date anyone who sells their property will be required to have an inspection by the fire department prior to the sale or transfer of their property.

LEAD PAINT

INTRODUCTION

Lead poisoning is a disease caused by swallowing or inhaling lead that may be present in paint and the dust from paint in older homes. Lead dust enters children's bodies when they put their contaminated hands or toys in their mouths. Lead poisoning may damage the brain, kidneys, and nervous system of young children. Low levels may cause learning and behavioral problems, while high levels may cause retardation, convulsions, and coma. Lead paint was used in most homes built in Massachusetts before 1978.



Comprehensive and up to date information relating to lead paint can be obtained from the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP) at <http://www.mass.gov/dph/clppp/clppp.htm> or (800) 532-9571.



The law requires that landlords remove lead paint in any property where a child under six years old resides.¹

This includes the unit in which the child lives, the common areas, and the outside of the property. Not all surfaces have to be delead. If the lead paint is intact, the surface above five feet does not have to be treated. However, surfaces below five feet, including but not limited to wall corners, doors, stairs, railings, windows, baseboards, and chair railings have to be treated regardless of whether the paint is intact or not. The landlord is responsible for complying with the lead law and paying the cost to delead.

Prior to entering into a rental agreement or lease, the landlord and tenant must sign two copies of the Tenant Lead Law Notification form and Tenant Certification form. Each party gets a copy to keep. These forms give the tenant information about lead paint and require the landlord to disclose the presence of lead paint if applicable. They also require the landlord to provide the tenant with copies of available documents relating to lead paint including any Lead Inspection Report, Risk Assessment Report, Letter of Interim Control, or Letter of Compliance. Both forms, as well as other lead paint

materials, are available from CLPPP in several languages including Cambodian/Khmer, Haitian Creole, Portuguese, Spanish, and Vietnamese from CLPPP.



See Tenant Lead Law Notification form and Tenant Certification form at the end of this Chapter.

Tenant notification applies to all tenants, whether or not they have a child under six living with them. Landlords may include the Tenant Lead Law Notification/Tenant Certification form in the lease, as opposed to using a separate form. Landlords who fail to perform their tenant notification obligations are liable for all damages resulting from their failure to do so, and also may be fined up to \$1,000.00.



It is discriminatory and a violation of the law to refuse to rent to a family with children because the unit has lead paint, to refuse to renew a lease with a family with children because the unit has lead paint, or to evict a family because they have children when the unit has lead paint.²

Violations of the lead law are also violations of the State Sanitary Code and tenants may employ any and all remedies available to them under the Code.³



See Chapter 8, Tenant Remedies

Tenants may also have a claim for damages under the Consumer Protection Act.⁴



See Chapter 22, Consumer Protection Act

Ultimately, the landlord is liable for all damages caused by the failure to comply with the lead laws whether the landlord knew of the presence of lead or not.⁵

TWO WAYS TO COMPLY WITH THE LEAD PAINT LAWS:

1. Have all lead hazards removed or covered.

Landlords must first hire a licensed lead inspector to test the residence for lead and record all lead

hazards. The landlord should then hire a licensed deleader to perform the necessary high risk work. Moderate and low risk work can be done by the licensed deleader, the landlord, or an agent of the landlord. The landlord or agent must complete special training before they may perform deleading tasks.⁶ The training consists of a one day CLPPP course that covers safety procedures, cleanup, and what is necessary to meet the Lead Law and Regulations requirements. The landlord or agent must pass a CLPPP exam and then will receive a certificate to prove that they are authorized to do this work. Training providers generally charge \$150.00-\$200.00 for an eight hour course. To find providers in your area and their training schedules, check the CLPPP website at <http://www.mass.gov/dph/clppp/trainpro.htm>.

Low risk deleading work includes removing and replacing doors and shutters, applying vinyl siding to the exterior of the building, capping baseboards, and applying encapsulates to appropriate surfaces.⁷ Low risk deleading may be performed by the owner or agent after the home has been inspected by a licensed lead inspector or risk assessor, the owner has reviewed the Owner/Agent Deleading Packet, and the at home test included in the packet has been taken and returned to the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP).

Moderate risk deleading work includes removing windows and woodwork, and making intact deteriorated lead paint in an area no more than 2 square feet per interior room and no more than 10 square feet total on exterior surfaces.⁸ More dangerous work, such as making large amounts of loose paint intact and using chemical paint strippers, is considered high risk deleading and can only be done by a licensed deleader.

After all the repairs have been made, the licensed lead inspector should return to inspect the home. A Letter of Full Compliance will be given to the landlord once the work is approved.

2. **Have only urgent lead hazards corrected, while controlling remaining hazards.**

This temporary method, known as interim control, protects residents from lead poisoning until the home is fully deleaded. This option gives landlords up to two years to fully delead and come into compliance with the law. Landlords must first hire a licensed risk assessor who will do a lead inspection and determine what work, if any, needs to be done in order to obtain a Letter

of Interim Control. The risk assessor will locate the most serious lead hazards, usually peeling and chipping lead paint and lead dust, and a licensed deleader must be brought in to remove these hazards and do all other high risk work. Moderate and low risk deleading can be done by the licensed deleader, the properly trained⁹ landlord, or a trained agent of the landlord.

After the urgent lead hazards are removed, the landlord will be given a Letter of Interim Control, which is good for one year. The property will need to be re-inspected before the end of that year and recertified for another year.¹⁰ By the end of the second year, the property must be fully deleaded and the landlord must obtain a Letter of Full Compliance. During the two year period of interim control, the landlord is free from strict liability under the Massachusetts Lead Law, but is still liable for all damages due to the landlord's breach of reasonable care.¹¹

To obtain a list of licensed lead inspectors, deleaders, and risk assessors, contact the CLPPP. A list of licensed deleaders can also be obtained from the state Department of Labor and Workforce Development.

WHEN TO DELEAD

If the property with lead is vacant and new tenants have a child under the age of six, the property must be deleaded or brought under interim control prior to the time the tenants move in. The landlord may delay the start of the tenancy for up to thirty days to obtain the Letter of Interim Control or Letter of Full Compliance. During this delay, the landlord is not responsible for the tenant's living expenses.¹²

If tenants are already residing in a unit when the presence of lead is discovered, and a child under six is already living there or will be living there, deleading or correcting and controlling of hazards should occur as soon as possible thereafter. Tenants will have to be relocated while certain deleading work is taking place inside the home. They will be able to return to the property only after the licensed lead inspector or risk assessor determines that it is safe. The landlord has the right to move the tenant to a substitute unit upon reasonable notice, provided that the owner pays the reasonable moving expenses and cost of the substitute unit which exceeds the rent of the unit being deleaded. If the tenant does not accept the substitute unit offered by the landlord, the landlord will not be responsible for any expenses other than the moving expenses and cost of the substitute unit offered by the landlord which exceeds the rent of the unit being deleaded.¹³

FINANCIAL ASSISTANCE

Massachusetts has many financing programs available to help property owners pay for deleading their homes, including grants, low interest loans, loan subsidies, and tax credit assistance. There is a state income tax credit of \$1,500.00 per unit or the cost of deleading each dwelling unit, and a credit for interim control deleading measures of \$500.00, or half the cost of the work, whichever is less.¹⁴ The credit for interim control measures is applied towards the \$1,500.00 total. Another option is the Lead Abatement Loan Program, which provides loans for deleading work to owners of buildings in which low to moderate income families reside.¹⁵ Funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Department of Housing and Community Development, MassHousing, and local community development planning departments. To obtain further current information, contact these organizations or the CLPPP.



See Chapter 23, Rehabilitation Programs for Rental Properties

LANDLORD LIABILITY



The landlord is liable for all damages caused by the failure to comply with the lead laws.¹⁶

The lead law is a strict liability statute which means that the injured party need not prove that the landlord knew of the lead or was negligent in any way. In most cases, the fact that lead was present on the property and that poisoning occurred due to lead is enough to create liability. Homeowner's insurance will not cover damages incurred from lead poisoning.

The only time that strict liability does not apply is in cases where the landlord has obtained a Letter of Full Compliance from a licensed lead inspector or a Letter of Interim Control which is in effect and the landlord is exercising reasonable care.¹⁷

An owner may not avoid liability by asking tenants to sign an agreement that they will accept the presence of lead paint. Under the law, the child injured by lead paint that has not been properly removed or covered by the landlord may sue the landlord for damages until the child reaches twenty years of age. Monetary damages awarded against an owner in violation of the lead law are high because lead poisoning can cause severe life-long damages to the child.

An owner may not avoid liability by refusing to rent a unit to a family with children under the age of six.¹⁸ This is a form of discrimination, which carries serious consequences.



See Chapter 4, Finding a Tenant to Rent Your Property

The presence of lead paint endangers the health or safety of the child, and thus may violate the warranty of habitability.¹⁹ Damages for breaching the warranty of habitability take the form of a rent abatement and are measured by the difference between the fair market value of the premises as warranted and the fair market value of the premises with the lead paint.



See Chapter 8, Tenant Remedies for Bad Conditions

The landlord may be subject to severe damages for failing to remove lead paint after being ordered to do so.²⁰ Punitive damages, which may be as much as three times the amount of the actual damages, are awarded against owners who willfully fail to correct a condition. Failure to comply with the Lead Law is also an emergency public health matter and can carry criminal penalties. Please note that damages in lead paint liability cases may be extremely high and it is financially, legally, and morally responsible to delead all units and areas where children will reside.²¹

LANDLORD EXEMPTIONS

The Massachusetts lead paint law does not apply to houses built after 1978. Any apartment unit that has less than 250 square feet of living space is also exempt, as long as there is no child under the age of six living there. Vacation rentals for 31 days or less are also exempt. However, renters must be given a Short-Term Vacation Rental Notification form, and if there is chipping or peeling lead paint, the exemption no longer applies.²²

ENDNOTES

- ¹ G.L. c. 111, §197; 105 CMR 460.100
- ² G.L. c. 151B
- ³ G.L. c. 111, §198
- ⁴ G.L. c. 93A; 105 CMR 3.17(1)
- ⁵ G.L. c. 111, §199; 105 CMR 460.180
- ⁶ 105 CMR 460.175(D)
- ⁷ 105 CMR 460.175(A)(1)
- ⁸ 105 CMR 460.175(B)(1)
- ⁹ 105 CMR 460.175(D)
- ¹⁰ G.L. c. 111, §197(b)
- ¹¹ G.L. c. 111, §197(c)(5)
- ¹² G.L. c. 111, §197(h)
- ¹³ G.L. c. 111, §197(h)
- ¹⁴ G.L. c. 62, §6(e)
- ¹⁵ G.L. c. 111, §197E; 760 CMR 14.000
- ¹⁶ G.L. c. 111, §199; 105 CMR 460.180
- ¹⁷ G.L. c. 197C
- ¹⁸ G.L. c. 111, §199A; *McFadden v. Moll*, 16 Mass.L.Rptr. 266 (2003)
- ¹⁹ *Elliott v. Chaouche*, 2000 WL 121785 (Mass.App.Div. 2000)
- ²⁰ G.L. c. 111, §199; 105 CMR 460.190
- ²¹ See *Viere v. Privitera*, 11 Mass. Lawyer's Weekly 392 (1982), where a tenant was awarded more than \$2,000,000.
- ²² G.L. c. 111, §199B

Tenant Lead Law Notification

What lead paint forms must owners of rental homes give to new tenants?

Before renting a home built before 1978, the property owner and the new tenant must sign two copies of this **Tenant Lead Law Notification** and **Tenant Certification Form**, and the property owner must give the tenant one of the signed copies to keep. If any of the following forms exist for the unit, tenants must also be given a copy of them: lead inspection or risk assessment report, Letter of Compliance, or Letter of Interim Control. **This form is for compliance with both Massachusetts and federal lead notification requirements.**

What is lead poisoning and who is at risk of becoming lead poisoned?

Lead poisoning is a serious environmental hazard. It is most dangerous for children under six years old. It can cause permanent harm to young children's brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavior problems. Young children are more easily and more seriously poisoned than others, but older children and adults can become lead poisoned too. Lead in the body of a pregnant woman can hurt her baby before birth and cause problems with the pregnancy. Adults who become lead poisoned can have problems having children, and can have high blood pressure, stomach problems, nerve problems, memory problems and muscle and joint pain.

How do children and adults become lead poisoned?

Lead is often found in paint on the inside and outside of homes built before 1978. The lead paint in these homes causes almost all lead poisoning in young children. The main way children get lead poisoning is from swallowing lead paint dust and chips. Lead is so harmful that even a small amount can poison a child. Lead paint under layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and tear and home repair work.

Lead paint dust and chips in the home most often come from peeling or chipping lead painted surfaces; lead paint on moving parts of windows or on window parts that are rubbed by moving parts; lead paint on surfaces that get bumped or walked on, such as floors, porches, stairs, and woodwork; and lead paint on surfaces that stick out which a child may be able to mouth such as window sills.

Most lead poisoning is caused by children's normal behavior of putting their hands or other things in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. A child can also get lead from other sources, such as soil and water, but these rarely cause lead poisoning by themselves. Lead can be found in soil near old, lead-painted homes. If children play in bare, leaded soil, or eat vegetables or fruits grown in such soil, or if leaded soil is tracked into the home from outside and gets on children's hands or toys, lead may enter their bodies. Most adult lead poisoning is caused by adults breathing in or swallowing lead dust at work, or, if they live in older homes with lead paint, through home repairs.

How can you find out if someone is lead poisoned?

Most people who are lead poisoned do not have any special symptoms. The only way to find out if a child or adult is lead poisoned is to have his or her blood tested. Children in Massachusetts must be tested at least once a year from the time they are between nine months and one year old until they are four years old. Your doctor, other health care provider or Board of Health can do this. A lead poisoned child will need medical care. A home with lead paint must be deleaded for a lead poisoned child to get well.

What kind of homes are more likely to have lead paint?

In 1978, the United States government banned lead from house paint. Lead paint can be found in all types of homes built before 1978: single-family and multi-family; homes in cities, suburbs or the countryside; private housing or state or federal public housing. The older the home, the more likely it is to have lead paint. The older the paint, the higher its lead content is likely to be.

Can regular home repairs cause lead poisoning?

There is a danger of lead poisoning any time painted surfaces inside or outside the home are scraped for repainting, or woodwork is stripped or removed, or windows or walls are removed. This is because lead paint is found in almost all Massachusetts homes built before 1978, and so many of Massachusetts' homes are old. Special care must be taken whenever home repair work is done. No one should use power sanders, open flame torches, or heat guns to remove lead paint, since these methods create a lot of lead dust and fumes. Ask the owner of your home if a lead inspection has been done. The inspection report will tell you which surfaces have lead paint and need extra care in setting up for repair work, doing the repairs, and cleaning up afterwards. Temporarily move your family (especially children and pregnant women) out of the home while home repair work is being done and cleaned up. If this is not possible, tape up plastic sheets to completely seal off the area where the work is going on. No one should do repair work in older homes without learning about safe ways to do the work to reduce the danger of lead dust. Hundreds of cases of childhood and adult lead poisoning happen each year from home repair work.

What can you do to prevent lead poisoning?

- Talk to your child's doctor about lead.
- Have your child tested for lead at least once a year until he/she is four years old.
- Ask the owner if your home has been deleaded or call the state Childhood Lead Poisoning Prevention Program (CLPPP) at 1-800-532-9571, or your local Board of Health.
- Tell the owner if you have a new baby, or if a new child under six years old lives with you.
- If your home was deleaded, but has peeling paint, tell and write the owner. If he/she does not respond, call CLPPP or your local Board of Health.
- Make sure only safe methods are used to paint or make repairs to your home, and to clean up afterwards.
- If your home has not been deleaded, you can do some things to temporarily reduce the chances of your child becoming lead poisoned. You can clean your home regularly with paper towels and any household detergent and warm water to wipe up dust and loose paint chips. Rub hard to get rid of more lead. When you are done, put the dirty paper towels in a plastic bag and throw them out. The areas to clean most often are window wells, sills, and floors. Wash your child's hands often (especially before eating or sleeping) and wash your child's toys, bottles and pacifiers often. Make sure your child eats foods with lots of calcium and iron, and avoid foods and snacks that are high in fat. If you think your soil may have lead in it, have it tested. Use a door mat to help prevent dirt from getting into your home. Cover bare leaded dirt by planting grass or bushes, and use mats, bark mulch or other ground covers under swings and slides. Plant gardens away from old homes, or in pots using new soil. Remember, the only way to permanently lower the risk of your child getting lead poisoned is to have your home deleaded if it contains lead paint.

How do you find out where lead paint hazards may be in a home?

The only way to know for sure is to have a lead inspection or risk assessment done. The lead inspector will test the surfaces of your home and give the landlord and you a written report that tells you where there is lead in amounts that are a hazard by state law. For interim control, a temporary way to have your home made safe from lead hazards, a risk assessor does a lead inspection plus a risk assessment. During a risk assessment, the home is checked for the most serious lead hazards, which must be fixed right away. The risk assessor would give the landlord and you a written report of the areas with too much lead and the serious lead hazards. Lead inspectors and risk assessors have been trained, licensed by the Department of Public Health, and have experience using the state-approved methods for testing for lead paint. These methods are use of a sodium sulfide solution, a portable x-ray fluorescence machine or lab tests of paint samples. You can get a list of licensed lead inspectors and risk assessors from CLPPP.

In Massachusetts, what must the owner of a home built before 1978 do if a child under six years old lives there?

An owner of a home in Massachusetts built before 1978 must have the home inspected for lead if a child under six years old lives there. If lead hazards are found, the home must be deleaded or brought under interim control. Only a licensed deleader may do high-risk deleading work, such as removing lead paint or repairing chipping and peeling lead paint. You can get a list of licensed deleaders from the state Department of Labor and Workforce Development. Deleaders are trained to use safe

methods to prepare to work, do the deleading, and clean up. Either a deleader, the owner or someone who works for the owner who is not a licensed deleader can do certain other deleading and interim control work. Owners and workers must have special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor checks the home. He or she may take dust samples to test for lead, to make sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or Letter of Interim Control. After getting one of these letters, the owner must take care of the home and make sure there is no peeling paint.

What is a Letter of Compliance?

It is a legal letter under state law that says either that there are no lead paint hazards or that the home has been delead. The letter is signed and dated by a licensed lead inspector.

What is a Letter of Interim Control?

It is a legal letter under state law that says work necessary to make the home temporarily safe from serious lead hazards has been done. The letter is signed and dated by a licensed risk assessor. It is good for one year, but can be renewed for another year. The owner must fully delead the home and get a Letter of Compliance before the end of the second year.

Where can I learn more about lead poisoning?

Massachusetts Department of Public Health
Childhood Lead Poisoning Prevention Program (CLPPP)
(For more copies of this form, as well as a full range of information on lead poisoning prevention, tenants' rights and responsibilities under the MA Lead Law, how to clean lead dust and chips, healthy foods to protect your children, financial help for owners, safe deleading and renovation work, and soil testing.)
1-800-532-9571

Your local lead poisoning prevention program
or your local Board of Health

U.S. Consumer Product Safety Commission
(Information about lead in consumer products)
1-800-638-2772

U.S. Environmental Protection Agency, Region I
(Information about federal laws on lead)
617-918-1524

Massachusetts Department of Labor and
Workforce Development
(List of licensed deleaders)
617-969-7177, 1-800-425-0004

National Lead Information Center
(General lead poisoning information)
1-800-424-5323