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Getting the Lead Out: A Practitioner's View of the New Maryland Lead Laws

From the Editors:

Last year, more than 14,000 children in Maryland under the age of six who were tested had elevated lead levels in their blood, and approximately 2,500 were poisoned enough to warrant medical treatment. Infants and toddlers who swallow even tiny amounts of flaking lead paint or dust over time can suffer impaired intelligence, learning disabilities, and behavioral problems. Severe poisoning can cause mental retardation.*

On August 22, 1994, the Court of Appeals of Maryland delivered its opinion in *Richwind Joint Venture v. Brunson*, 335 Md. 661, 645 A.2d 1147 (1994), which was one of three cases dealing with suits to redress injuries to children who ingested lead-based paint on leased premises. In *Richwind*, the court upheld a negligence finding and a $500,000 damage award, based on the failure to correct a defect when the landlord had reason to know of the defect. The other two cases resulted in decisions affirming summary judgment in favor of the landlords on negligence theories. *Scroggins v. Dahne*, 335 Md. 688, 645 A.2d 1160 (1994). The court ruled that the Baltimore City Code, which requires the use of lead-free paint for dwelling interiors and that all dwellings be kept in good repair fit for human habitation, does not alter the common law requirement that a landlord is not liable for a defective condition on a property unless the landlord either knows or has reason to know of the condition and has a reasonable opportunity to correct it.

On October 1, 1994, the Maryland Lead Act, Maryland's pioneering effort to reduce widespread lead-paint hazards while preserving dwindling low-income housing, became effective. The new law covers 160,000 apartments and rental homes statewide that were built before 1950 when lead-based paint was widely used. Nearly half the rental housing in Baltimore is of that vintage, as are a third or more of the rental units in eleven rural counties.* The law will allow landlords to limit their liability for child lead poisoning, if they bring properties into compliance with prescribed lead paint reduction standards.

The *Law Forum* sought the opinions of four Maryland practitioners regarding both the effectiveness and the impact of the *Richwind* decision and the Maryland Lead Act on litigation surrounding childhood lead poisoning injuries. The views expressed in the following article reflect the views of each author, and should not be construed as reflecting the views of the *Law Forum*, or of any other organization or entity. This article is not intended to provide legal advice or opinions; such advice may be given only when related to specific factual situations.

About the Authors:

Christopher Brown, an associate professor of law at the University of Maryland School of Law, is a partner in the Baltimore law firm of Brown, Goldstein & Levy, and specializes in litigating lead poisoning claims on behalf of children.

D. Robert Enten is a partner in the Maryland law firm of Weinberg & Green and is a member of the firm's Banking and Financial Services Department. As lobbyist for the Property Owners Association of Greater Baltimore, Mr. Enten was deeply involved in drafting and lobbying for passage of the final version of House Bill 760, the Lead Poisoning Prevention Program.

Lisa Kershner is an associate in the Commercial Litigation section of Whiteford, Taylor & Preston, L.L.P. in Baltimore, and practices primarily in the areas of environmental, insurance, and related commercial litigation and regulation. Ms. Kershner also served as Executive Director of the Maryland Lead Poisoning Commission and has assisted various groups and state agencies with the implementation of H.B. 760.

Jeanne B. Gardner is a partner at the law firm of Goodell, DeVries, Leech & Gray. Ms. Gardner has been involved in the defense of lead poisoning cases since she joined the bar in 1982. Ms. Gardner has given presentations in the area of lead poisoning to several organizations, including the Lead Paint Poisoning Commission, the Property Owner's Association of Greater Baltimore, Inc., and several insurance companies.

*Timothy B. Wheeler, *Lead Law Begins Tomorrow, but Rules Questioned*, Baltimore Sun, Sept. 30, 1994, at 1B.

***Law Forum:* True or False -- The "reason to know" standard, as opposed to the "should know" standard, rewards landlords who "know nothing."**

Brown: At first blush, the court's adoption in *Richwind* of the test that a landlord is responsible for lead poisoning only if he or she knew or "had reason to know" of its danger and probability, would appear to reward the landlord who remained intentionally or blissfully ignorant of all matters concerning his or her properties. By saying that the common law imposes no duty to inspect the premises, the court's opinion might be read to indicate that by sticking his or her head in the ground a landlord could gain immunity in suit.

The court's adoption of the reasoning in a federal court case, *Hayes v. Hambruch*, 841 F. Supp. 706 (D. Md. 1994), however, dispels this reading. *Hayes* indicated that a landlord who "knows nothing" might still be deemed to have had "reason to know" if landlords in general should have been aware of the hazards of lead. Thus, knowledge falling below that of a "reasonable landlord" should prove to be no escape for a landlord.

Gardner: False - the "reason to know" standard, as opposed to the "should know" standard, is the only fair standard to be applied in the landlord/tenant context. The tenant has exclusive possession of the premises and is in the best position to know of the changing condition of the premises, especially in terms of chipping, peeling, or flaking paint. Under a "should know" standard, the landlord arguably would have a duty to ascertain whether chipping, peeling, or flaking paint existed on the premises. This is inconsistent with longstanding Maryland law and is not economically feasible. The tenant is in the premises on a daily basis, the landlord is not, nor is it reasonable to expect the landlord to inspect the premises on a daily, weekly, or any regular basis.

Kershner: The "reason to know" standard clearly relieves a landlord of any affirmative duty to test, investigate, or ascertain whether lead risks are present in a rental property. However, as *Richwind* makes clear, a landlord cannot escape liability by burying his head in the sand. For example, in the *Richwind* case, the court of appeals noted that evidence that a property manager knew of the health risks associated with lead-based paint, knew of the likelihood that lead-based paint would be present in older apartment units, and had actual knowledge of chipping, peeling, and flaking paint in the plaintiffs' unit was sufficient to create a jury question on the issue of negligence.

Although the "reason to know" standard can be criticized in that it does not impose any affirmative duty upon a landlord to proactively determine whether hazardous conditions are present, the court's holding is consistent with prior law. Further, the enactment of House Bill 760 [the Maryland Lead Act] diminishes the practical impact the decision is likely to have on landlord conduct.

LF: **What or how much evidence will be necessary to trigger the "reason to know" standard?**

Brown: In addition to being held to the reasonable landlord standard of knowledge, there are several other avenues by which a landlord can gain knowledge of flaking or peeling lead-based paint. A review of the companion cases to *Richwind* indicates that whenever a landlord or his or her agents travel through a house (for repairs or an inspection) the landlord can be charged with knowledge of observable peeling paint. These and similar methods of indirect notice should present jury issues regarding the landlord's state of mind.

Gardner: Evidence that the tenant or his agents informed the landlord of chipping, peeling, or flaking paint, that the landlord failed to correct the condition, and that the landlord had knowledge of the dangers of lead paint in the properties, the age of the property in question will be sufficient to take the case to the jury. The landlord may gain knowledge concerning specific conditions in the property through other means, such as governmental inspections. Additionally, depending on the fact scenario presented, a landlord could be held to have "reason to know" of conditions in the premises if his agent visited the property and observed that specific condition.

Kershner: At a minimum, fact scenarios similar or analogous to the facts in *Richwind* will be sufficient to create a jury question on the issue of knowledge or

"reason to know" of lead-based paint hazards in a rental unit. Further, a strong argument can be constructed based upon the scope of the Maryland Lead Act that an owner of pre-1950 rental housing has "reason to know" that unless certain risk reduction measures are performed, the unit is likely to pose lead-based paint hazards to occupants. Since the Act creates a "presumption of fault" based upon an owner's violation of the lead hazard reduction standard, one can argue that the legislature has determined that owners of "affected property" who do not perform the requisite treatments upon "change in occupancy" or in response to notice of specific risk situations during a tenancy have acted unreasonably (i.e., negligently) with respect to lead hazards in the unit.

LF: **The majority of insurers are currently writing lead hazard exclusions into their landlord/tenant policies. Does the Maryland Lead Act provide any incentive for insurers to provide coverage for lead paint injuries?**

Kershner: The Act does not create "incentives" as such, but does make lead risks "insurable." The insurance provisions of the Lead Act are applicable to admitted carriers which issue premises liability coverage for "affected property" in Maryland. Pursuant to these provisions, a lead exclusion contained in a policy applicable to "affected property" is waived by *operation of the statute* to the extent of benefits payable under the "qualified offer" (capped at $17,000), if the property is certified as being in compliance with the specified risk reduction standard *and* the owner has complied with all other statutory requirements. These provisions are intended, among other things, to make lead-risks "insurable."

There are no "incentives" to offer this type of coverage (except perhaps to the extent limited-liability is deemed an "incentive"). However, an insurer, in order to avoid the effect of the waiver would have to cease writing premises liability coverage for "affected property" in Maryland, including not only pre-1950 rental property, but also post-1949 rental property as to which owners make an election. This is a drastic step for an insurer which writes any significant volume of premises coverage in Maryland.

Additionally, if the Lead Act renders lead-risks commercially insurable - and I believe it does - one would not expect insurers which are offering premises liability coverage to cease writing this insurance in response to the lead law.[1]

The principal issue, in my view, is not whether insurers will withdraw from the Maryland market, but whether such coverage as is offered will be affordable to most landlords, particularly "small" landlords. Since the insurance component does not go into effect until January 1995, cost information may not be available for several months. Also, because of the uncertainty among both insurers and insureds, the Lead Act provides that the cost and availability of insurance is to be monitored and periodically reported by the new Lead Poisoning Prevention Commission. Additionally, the new commission in January 1995 is to submit recommendations concerning potential pooling arrangements among landlords to cover the payment of benefits under the qualified offer.

Enten: The Lead Act provides incentives for insurers to provide coverage for lead paint injuries. Insurers are in the business of underwriting risks. Their "risk" should be greatly limited and more definable with the passage of the Act. This is because, as to all children whose first test showing elevated blood lead occurs after September 30, 1994, no cause of action can be maintained by that child against a landlord who (a) has complied with the applicable provisions of the law, including registration, the sending of information packets, and the carrying out of appropriate risk reduction measures, and (b) offers to be responsible for up to $17,000 of the child's expenses. Accordingly, the occurrence of law suits should be tremendously reduced and the risks to insurers lessened. In order for a plaintiff to recover, the plaintiff will have to show that the owner of the property failed to meet an applicable standard during the plaintiff's occupancy of the rental dwelling unit. Otherwise, the property owner's liability is capped at $17,000. When you compare this situation to the previous exposure under the tort system where every child could bring a lawsuit with no cap on liability based upon the plaintiff's word against the owner's word regarding the condition of the property, one must believe that insurance will become more available.

LF: **Under the Maryland Lead Act, will tenants be sufficiently compensated for their injuries?**

Brown: A child who ingests lead-based paint can suffer permanent brain damage, which is usually manifested by learning and communications disabilities. Although chelation treatment can rid the rest of the child's body of lead, medical science today knows of no way to remove lead from the brain. The typical brain damaged child will incur thousands of dollars in medical bills, need extensive corrective tutoring and vocational training, and lose significant lifetime earnings due to permanent I.Q. loss. These damages can easily amount to several hundred thousand dollars. The Act, however, limits a child's recovery to only medical expenses and temporary housing costs, amounting to no more than $17,000. It denies the lead-poisoning victim of any chance to regain, as best as money can attempt to compensate, his or her lost quality of life. In this sense, the Act has a serious punitive effect on the infant victims.

Gardner: The Maryland Lead Act recognizes the societal problem of lead poisoning and is an attempt by the legislature to balance the interest of property owners and tenants, while at the same time ensuring that an affordable housing stock remains available in Baltimore City and other areas in Maryland. The majority of lead paint cases filed in this state do *not* involve hospitalization or require treatment for lead poisoning. The children in these cases similarly do not require or receive any tutoring or counseling outside of the public school system, and do not require or receive any vocational rehabilitation. The $17,000 figure is to ensure that children, once diagnosed with non-threatening low lead levels, will be removed from the leaded environment so as to ensure that the low levels never reach a level that could cause permanent injury. The purpose of the Act is to work towards prevention of high lead levels, something that the traditional tort system does not currently address, nor is it equipped to address.

Kershner: Since the effectiveness of the hazard reduction treatments specified in the Lead Act is not known with certainty, no one can "rule-out" the possibility that a child may be lead-poisoned, but precluded under the Act from recovering "damages" in the traditional sense. This scenario, hopefully, will be rare. It should be recognized, however, that in many *pre-Act lead poisoning cases*, children have been severely injured and though entitled in theory to seek full compensatory damages, have been unable to even identify, much less to actually collect damages from, a viable defendant.

There are a number of reasons to expect that the Lead Act, over a period of several years, should materially reduce the frequency and severity of childhood lead poisoning, goals which the (pre-Act) tort system did not achieve. First, the "qualified offer" which provides for the relocation of a "person at risk" to "lead-safe" housing is intended to *eliminate ongoing lead exposures* rather than to provide "compensation" in the traditional sense. Toward this end, the Act also contains provisions for early notification to parents *and for the first time*, to rental property owners whenever a child's blood lead level reaches at least 15 ug/dl (micrograms of lead per deciliter of blood). This notification system is intended to facilitate timely intervention by both parents and landlords so that further exposure and more significant harm to the child can be prevented. Since *both the degree and duration* of an elevated blood lead level are important determinants of severity of injury, there is reason to believe that severe injuries can be prevented by timely notification and response in the form of relocation to "lead-safe" housing. This is not an unrealistic expectation, in my view, since blood lead levels have steadily declined in response to the elimination or reduction of various environmental sources of lead exposure and in response to increased public health services such as blood lead screening and public education.[2]

These considerations obviously do not address or mitigate the potentially harsh result for a lead-poisoned child who, notwithstanding early notification, property clean-up, and expanded health services, nonetheless sustains very serious injury. This is an area which will need monitoring as the legislation is implemented, and which may need to be addressed by additional legislation if the clean-up measures or notification and response system prove inadequate.

Finally, I would note that owners who violate the Lead Act are still subject to tort liability. Since these owners are unlikely to carry insurance applicable to lead claims and are not even eligible to make a qualified offer, the injured child may have *no remedy*. Additional legislation may be needed to address what hopefully will prove to be a narrower problem involving severely substandard housing or landlords who rent affected property in violation of the applicable hazard reduction standard.

Enten: Whether a plaintiff is "sufficiently"

compensated can only be looked at on a case-by-case basis. The purpose of the Lead Act was to spread benefits among all children suffering from the ingestion of lead. Under the current system, for the most part, only those children fortunate enough to bring suit against a property owner with insurance covering claims for lead poisoning can make a recovery, and in most cases, realization of that recovery is delayed for many years. Under the Act, benefits will become immediately payable to every child with an elevated blood lead, regardless of whether the owner of the property had insurance and irrespective of the finding of any fault on the part of the landlord.

LF: **Under the Act, will landlords be sufficiently protected from liability?**

Kershner: The Maryland Lead Act is the strongest liability relief legislation in the toxic tort area of which I am aware. A number of aspects are noteworthy.

First, the protection afforded to an owner who fully complies with the statutory requirements is virtually absolute and subject only to proof of specified exceptions, for example, proof of fraud.

The Act, in some cases, will also confer immunity from traditional tort actions even if the owner has not performed any testing or treatment to reduce lead hazards in the property where exposure occurred. This may result, for example, if there has not been a "change in occupancy" after the effective date of the Act, and the owner has not received "notice" of a "defect" or specified risk situation which triggers an obligation to perform "modified risk reduction" during the course of the tenancy.[3] Under the latter provisions, an owner is protected even if nothing has been done to reduce lead hazards in the affected property, unless and until the owner is given the requisite "notice." This means, among other things, that if the notification system fails to operate effectively (i.e., with a reasonable degree of accuracy and in a timely fashion) owners may be immune from tort actions without reducing lead hazards *and* without making a "qualified offer."[4]

Property treatments to be performed during the course of a tenancy are *essentially self-certifying* in the sense that third-party inspections or tests are not required to gain limited liability protection. Even in the absence of independent confirmation of compliance, the business records of the owner and the contractor may be rebutted only by *clear and convincing evidence*, a standard which is uniquely applied in this context to buttress the weight of documentation prepared by an essentially self-interested party.

The liability provisions of the Act protect property owners from lead-poisoning tort suits regardless of the alleged source of exposure on the premises. Thus, while owners are only required to address lead-based paint hazards in their housing inventory, owners are granted protection from tort liability (assuming compliance with the statute), even if the alleged source of lead poisoning happens to be plumbing fixtures, lead-soldered pipes, contaminated soil or other non-paint sources. (My own view is that these particular provisions, protecting owners from liability regardless of the alleged source of poisoning on the premises, were necessary, for a number of reasons, to achieve the Act's purpose. The scope of these provisions can be justified, I think, on the grounds that deteriorating lead-based paint is by far the most significant source of childhood lead poisoning in Maryland today. My comment, therefore, is not intended as criticism, but as illustration of the sweeping liability protection afforded by the statute in comparison to the much narrower range of lead hazard reduction activities which owners must perform in order to obtain liability relief.)

In short, given the interim nature of the property treatments and other statutory requirements applicable to owners of "affected property" (i.e., registration, notification, and in certain cases, making a "qualified offer"), the liability protection afforded by the Act is as strong as it can be without arguably violating constitutional rights and without utterly defeating the public health purpose of the statute.

Enten: Hopefully, there will come a day when landlords are sufficiently protected from liability. However, there will continue to be an enormous class of plaintiffs with tests showing an elevated blood lead prior to October 1, 1994 for which landlords will continue to have exposure.

LF: **The Maryland Lead Act has taken away the right of a tenant allegedly injured by the ingestion of lead paint to sue his or her landlord for compensation for, among other things, pain and suffering and loss of earning capacity. Will the Lead Act survive a constitutional attack?**

Kershner: One would expect, based upon past experience with limited liability legislation (e.g., workers' compensation systems), that the limited liability provisions of the new lead law will be challenged on constitutional grounds. For this reason, a number of potential constitutional issues were researched, initially by Lead Paint Poisoning Commission staff, and subsequently by legislative staff counsel.[5] On the basis of this research, Commission staff and, in my understanding, counsel to the General Assembly, concluded that the statute as enacted is constitutional on its face and does not violate state or federal constitutional guarantees of equal protection.

It seems likely that constitutional challenges, if and when asserted, will be based upon the Act as applied or as implemented, rather than upon the text of the statute alone. It is difficult to predict the viability of such challenges prior to implementation.

My belief is that the courts are likely to apply a "rational basis" analysis to any due process or equal protection challenges, since this extremely deferential test generally has been applied in constitutional challenges to tort reform measures and other limited liability systems. This standard will make it extremely difficult, though not impossible, for any such challenges to succeed.

Despite the acknowledged difficulty of succeeding in a constitutional challenge founded on a rational basis analysis, a number of potential challenges can be anticipated, including for example, claims that the Act violates due process and equal protection guarantees by 1) retroactively abrogating the rights of injured children who were *injuriously exposed* to lead (but not diagnosed) prior to the effective date of the Act; 2) foreclosing children's tort rights based upon the owner's *self-certification* of clean-up during occupancy; 3) foreclosing children's tort rights before any risk reduction is performed, and which even when performed, cannot be independently verified (HEPA vacuuming and phosphate washing cannot be verified, for example, by visual inspection); 4) foreclosing children's tort rights based on the performance of risk reduction measures *which in the absence of proper post-treatment clean-up, inspection, and testing actually increase lead risks for children.* It is conceivable that a court could find on the basis of these and perhaps other features of the Act as implemented, that the liability relief conferred by the Act does not bear a rational relationship to a legitimate state purpose.

LF: **Will the Maryland Lead Act succeed in removing childhood lead poisoning injuries from the traditional adversarial relationship present in litigation?**

Brown: The Act will not withdraw from litigation cases in which children tested positive for lead prior to October 1, 1994 or cases involving landlords who have not sought its broad protection. For those landlords who do comply with its conditions, however, a safe haven is afforded and an adequate compensatory remedy denied the tenants. There may still remain, however, litigation over whether a landlord has complied with the Act and therefore gained its immunity. But, by and large, the Act is a one-sided windfall for the rental industry.

Gardner: One of the primary purposes of the Act was to remove costly litigation, which has proven wholly ineffective in eliminating or resolving the lead poisoning problem in young children. For property owners who comply with the preventative measures of the Act, warning their tenants of the dangers of lead poisoning and making renovations and repairs directed toward reducing and eliminating lead hazards, the adversarial relationship present in the litigation should be removed. One could predict, however, that attorneys will challenge the Act from all angles. If the true goal of the Act is to be met, the reduction and eventual elimination of childhood lead poisoning, we must ensure that these challenges to the Act are defeated. Financial resources are scarce; the Act attempts to put all of our resources to the best use possible - relocation of children from housing known to be causing elevated lead levels and renovation of the existing affordable housing supply in Maryland.

Kershner: The stated purpose of the Act "is to reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing." Since there is tension between these objectives, the major components of the Act reflect significant compromise; further, one would expect that the tension inherent in the legislation's dual objectives will be reflected to some extent during implementation.

Nonetheless, to the extent that the Act succeeds in reducing blood lead levels and therefore tort litigation based on lead-poisoning, the legislation, over a period

of time, should gradually turn the apprehension which many landlords and tenants feel concerning this issue toward a more constructive dialogue. At a minimum, the Act would seem to have the potential to move landlord-tenant relationships regarding this issue in a more cooperative direction.

Among supporters of the Act, including both property owners and health advocates, there was a shared sense that the pre-Lead Act landscape was unacceptable and had resulted in a virtual stalemate; therefore, many supporters argued that some progress, however incremental, would be an "improvement."

In my opinion, it would be a mistake to expect any sudden sweeping change in landlord-tenant relationships or the volume of lead-related tort litigation as a result of the Act. Rather, my expectation is that it will probably take at least three to five years to evaluate the impact of the legislation based upon adequate data.

Enten: If the Lead Act works like it should, at some future date, the adversarial relationship present in litigation between tenants and property owners should be removed, provided the property owner complies with the requirements of the law and elects to make a qualified offer.

LF: **The new lead laws will have a positive/negative impact on lead paint litigation because . . .**

Brown: The Act will deny many blameless infants an opportunity to be compensated for their brain damage. It is on the backs of these innocent victims that money will be shifted to ease the landlords' and insurance companies' burdens.

Gardner: The lead paint litigation will unfortunately continue as the Act is not retroactive and does not apply to children diagnosed with elevated lead levels before October 1, 1994.

Kershner: Again, it is important to recognize that the legislation is not likely to have an immediate effect on the volume or tone of lead paint litigation. This is so because "accrued" claims (i.e., claims based upon an elevated blood lead level diagnosed prior to the effective date of the Act) may continue to be filed and litigated. Furthermore, given the current status of implementation (for example, regulations necessary to implement the Act have yet to be adopted on even an emergency basis), it seems unlikely that critically important components of the legislation, such as lead hazard reduction, registration of affected properties, and the notification system will be implemented either immediately or comprehensively.

In the long run, if property treatments result in material reduction of lead-based paint hazards and therefore in lead poisoning injuries, a decrease in lead paint tort litigation will certainly follow. Because the new risk reduction and limited liability system has not been tried by any other state, an ongoing advisory commission was created to monitor the impact of the legislation in these and other areas.

Since owners of "affected property" (including owners of post-1949 rental property who elect to participate in the limited liability system) are the only potentially responsible parties protected from lead poisoning tort litigation, it will be important to monitor whether other factors (e.g., lead abatement contractors, for example) become new target defendants.

Enten: Whether the Lead Act will have a positive or negative impact on lead paint litigation depends on your point of view. From the perspective of the plaintiffs' lawyers, the Act, at some future date, should have a negative impact. However, in keeping affordable housing available in Maryland and addressing on a global basis the issue of lead poisoning in children, the impact on children and property owners should be positive.

ENDNOTES

[1] The standard lead exclusion is a mechanism for limiting a broader coverage which already is provided by a policy applicable to specified premises. Traditionally, insurers have not offered any form of coverage which is specific to "lead hazards" or which constitutes "lead coverage." This is important, because it means that insurers do not separately rate "lead hazards."

[2] The "qualified offer" also provides payment for medical treatment reasonably necessary to *mitigate* the effects of lead poisoning, as determined by the treating physician or other health care provider, to the extent such treatment is not otherwise covered by medical assistance or a private health care plan. It is hoped and expected that the early notification system combined with lead hazard reduction in "affected property" will materially reduce, if not entirely eliminate, the need for conventional medical treatment (i.e., chelation therapy)

for lead-poisoned children. In any event, a lead-poisoned child will be able to receive all appropriate treatment up to age 18 even if the treatment is not covered by insurance or public medical assistance.

[3] *See e.g.*, Environment Art., §6-815 (risk reduction upon "change in occupancy"); § 6-819 (owner's duty to perform "modified risk reduction" upon notice of defined risk situations during course of tenancy); §6-836 (requirements for owner to be eligible for limited liability as defined by the "qualified offer"); and § 6-828 (B) (*precluding* an action against an owner who has complied with all applicable requirements of the Act, *unless the owner is first given "notice" and opportunity to make a "qualified offer"*).

[4] There are a number of different provisions in the Act relating to "notice" required to be provided to an owner. For example, "notice" to an owner that a "person at risk" who lives in the owner's unit has an elevated blood lead level *may* be given by any source, but is *required* to be given by the local health department. In addition, various forms of "notice" must be provided to the landlord in order to trigger the landlord's obligation to perform "modified risk reduction" in occupied rental units.

[5] The Commission staff researched potential constitutional issues related to the Commission's recommendations, not the final text of the statute. While the Lead Act reflects the framework and core mechanisms developed by the commission, there were several significant changes during the legislative session.

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