

No. _____

In the Supreme Court of the United States

**TIANGE HUANG, et. al.,
Petitioners,**

v.

**NGOC BACH PHAN; VINH CHE; KHANH CHE,
Respondents,**

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

APPENDIX

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Petitioners

Twenty-sixth day of December, MMXXII

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Appendix A

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 21-2040

QIUYUAN HUANG;
JING LIN; and
TIANGE HUANG,

Appellants

v.

NGOC BACH PHAN;
VINH CHE; and
KHANH CHE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:21-cv-00057)
District Judge: Honorable Paul S. Diamond

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 3, 2022
Before: MCKEE, SHWARTZ and MATEY, Circuit
Judges
(Opinion filed July 14, 2022)

OPINION*

PER CURIAM

The District Court granted a motion to dismiss the amended complaint filed by plaintiffs who claimed that their former landlords failed to provide statutorily required disclosures about lead-based paint in residential homes. This is an appeal of that ruling.

I.

Qiuyuan Huang, Jing Lin, and their son Tiange Huang (Appellants) sued property owners Ngoc Bach Phan and Khanh Che, and property manager Vinh Che (Appellees). In their amended complaint, Appellants claimed that Appellees violated both the Residential Lead-Based Paint Hazard Reduction Act (RLPHRA)—which, among other things, directs lessors to disclose the presence of lead-based paint or lead-based paint hazards—and the Toxic Substance Control Act (TSCA). Appellants requested declaratory and prospective-injunctive relief, as well as ten million dollars in damages.

Appellees responded with a motion to dismiss under Federal Rule of Civil Procedure 12(b). After the District Court denied Appellants' motion under Federal Rule of Civil Procedure 12(f) to strike

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

portions of the motion to dismiss, Appellants opposed Appellees' motion and sought leave to file a second amended complaint. While in their motion to amend Appellants maintained that they were not seeking to "add any causes of action," App. Vol. II at 74, their accompanying proposed second amended complaint plainly included new claims, under Pennsylvania law, for emotional distress.

The District Court granted Appellees' motion to dismiss and denied Appellants' motion to amend. The District Court agreed with Appellees that Tiange Huang and Lin lack standing to sue under the RLPHRA. The District Court determined further that Appellants could not seek injunctive relief under the TSCA because they were no longer tenants, and that as private parties they lacked capacity to sue for money damages. The District Court also determined that Qiuyuan Huang failed to plausibly allege injury under the RLPHRA. Finally, the District Court denied leave to amend as futile, insofar as it determined that the federal claims are inescapably defective and that it would not exercise supplemental jurisdiction over Appellants' putative state-law claims. The District Court thus dismissed Appellants' pleading with prejudice. This appeal followed.

II.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the District Court's order granting Appellees' motion under Rule 12(b)(6) to dismiss Appellants' amended complaint for failure to state a claim. *See Newark Cab Ass'n v. City of Newark*, 901 F.3d 146, 151 (3d Cir. 2018). "To withstand a Rule

12(b)(6) ‘motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Talley v. Wetzel*, 15 F.4th 275, 286 n.7 (3d Cir. 2021) (citation omitted). We review de novo the District Court’s determination that amendment would be futile and review the denial of leave to amend for abuse of discretion. *U.S. ex rel. Schumann v. AstraZeneca Pharms. L.P.*, 769 F.3d 837, 849 (3d Cir. 2014).

III.

We have carefully considered the arguments on appeal. For the reasons set forth below, we will affirm the District Court’s order granting Appellees’ motion to dismiss.

To begin with, the District Court was correct to dismiss Appellants’ TSCA claims. As the District Court rightly recognized, the TSCA permits private citizens to sue for injunctive relief to restrain violations, but it does not permit them to sue for money damages. *See Cudjoe ex rel. Cudjoe v. Dep’t of Veterans Affs.*, 426 F.3d 241, 248 n.5 (3d Cir. 2005). Appellants alleged in the amended complaint that they no longer live at the subject property, so the injunctive relief that they request is unavailable. *See Roe v. Operation Rescue*, 919 F.2d 857, 864 (3d Cir. 1990). The same goes for their requested declaratory relief. *See St. Thomas-St. John Hotel & Tourism Ass’n, Inc. v. Gov’t of U.S. Virgin Islands*, 218 F.3d 232, 240 (3d Cir. 2000).

The District Court also properly determined that Qiuyuan Huang failed to plausibly plead an RLPHRA claim. The RLPHRA’s private-right-of-

action provision states that “[a]ny person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.” 42 U.S.C. § 4852d(b)(3). *Cf. Randall v. Laconia, NH*, 679 F.3d 1, 8 (1st Cir. 2012) (Howard, J., concurring) (“A person *damaged* by a violation of the Residential Lead-Based Paint Hazard Reduction Act may seek recovery against the violator.”) (emphasis added). Here, Qiuyuan Huang’s alleged “damages incurred” were insufficiently pleaded in the amended complaint, which was filled almost exclusively with irrelevancies, statements of law, and conclusory factual allegations. *See James v. City of Wilkes-Barre*, 700 F.3d 675, 679 (3d Cir. 2012) (observing that we may “disregard rote recitals of the elements of a cause of action, legal conclusions, and mere conclusory statements”).¹

¹ The District Court dismissed Tiange Huang’s and Lin’s RLPHRA claims on standing grounds, reasoning that those litigants “were merely residents, not lessees, of Defendants’ property,” and that the statute “explicitly provides a cause of action only to the ‘purchaser or lessee,’ which does not include residents who were not parties to the lease agreement.” App. Vol. I at 5 (quoting 42 U.S.C. § 4852d(b)(3)). The District Court’s assessment, however, overlooked *Cudjoe*, 426 F.3d at 250 (remanding for consideration of non-lessee tenant’s standing to raise RLPHRA claim in light of Circuit precedent holding that “a person without express statutory standing may still have standing to sue if the person meets the minimum requirements for Article III standing as well as the additional elements of prudential standing”). Because standing as to Tiange Huang and Lin is supported by the pleadings, as well as the lease (attached to Appellees’ motion to dismiss, *see* App. Vol. II at 47-53), the District Court had jurisdiction to reach the

Furthermore, we discern no error in the District Court's determination that it would be futile to further amend the RLPHRA claim. In the proposed second amended complaint, Appellants alleged that they would not have leased Appellees' property if the required disclosures had been made; that they were exposed to paint chips and dust during their residence; and that uncertainty as to whether they have been exposed to lead-based paint has produced emotional distress, including physical symptoms. These allegations, without more, were insufficient to transform the RLPHRA claims from conclusory to plausible ones. And, for essentially that reason, the proposed second amended complaint failed to plausibly plead an emotional distress claim cognizable under Pennsylvania law. *See Bruffett v. Warner Commc'nns, Inc.*, 692 F.2d 910, 914 (3d Cir. 1982) (setting forth elements of Pennsylvania law claim for intentional infliction of emotional distress); *see also Toney v. Chester Cnty. Hosp.*, 36 A.3d 83, 99 (Pa. 2011) ("Unlike cases involving a physical impact, a plaintiff in a non-impact case faces a more difficult task of convincing a court of the legitimacy of the emotional distress and the causal nexus between the negligent action at issue and alleged distress.").²

merits of their RLPHRA claims. *Cf. Ellison v. Am. Bd. of Orthopaedic Surgery*, 11 F.4th 200, 205 (3d Cir. 2021). That said, Tiange Huang's and Lin's RLPHRA claims were deficiently pleaded for the same reason that Qiuyuan Huang's was. *Cf. Downey v. Pa. Dep't of Corr.*, 968 F.3d 299, 309 (3d Cir. 2020) (observing that "we may affirm the judgment on any grounds supported by the record").

² Further amendment of Appellants' pleading was thus futile regardless of whether the District Court would have had to exercise supplemental jurisdiction under 28 U.S.C. § 1337(c)(3)

IV.

Accordingly, we will affirm the judgment of the District Court.³ Appellants' motion for leave to file a supplemental appendix is denied. *See In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts*, 913 F.2d 89, 96 (3d Cir. 1990)

(as the District Court anticipated), or diversity jurisdiction under 28 U.S.C. § 1332(a)(1) (as Appellants advocated), over the state-law claims.

³ Appellants' argument in their opening brief related to recusal by the District Judge is without merit. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Additionally, we discern no error in the District Court's order denying Appellant's Rule 12(f) motion.

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Appendix B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2040

QIUYUAN HUANG;
JING LIN; and
TIANGE HUANG,
Appellants

v.

NGOC BACH PHAN;
VINH CHE; and
KHANH CHE

(E.D. Pa. Civ. No. 2:21-cv-00057)

SUR PETITION FOR REHEARING

[Filed: October 4, 2022]

Present: CHAGARES, Chief Judge, McKEE, AMBRO,
JORDAN, HARDIMAN, GREENAWAY, JR.,
SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, Circuit Judges

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The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Theodore A. McKee
Circuit Judge

Date: October 4, 2022

PDB/cc: Qiuyuan Huang
 Jing Lin
 Tiange Huang
 Andrew Estepani, Esq.

Appendix C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

21-CV-0057

[Filed: May 26, 2021]

QIUYUAN HUANG, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
NGOC BACH PHAN, <i>et al.</i> ,)
)
Defendants.)
)

ORDER

Pro se Plaintiffs Tiange Huang, Qiuyuan Huang, and Jing Lin seek to recover for their former landlords' failure to provide statutorily mandated lead-paint disclosures. Defendants have moved to dismiss, contending, *inter alia*, that Plaintiffs have failed to allege actual damages caused by this omission. I will grant the Motion and deny further amendment as futile.

I. PROCEDURAL HISTORY

Plaintiffs allege violations of the Residential Lead-Based Paint Hazard Reduction Act (“LHRA”) and the Toxic Substances Control Act (“TSCA”). 42 U.S.C. § 4851 *et seq.*; 15 U.S.C. § 2601 *et seq.* They seek: a declaratory judgment of noncompliance; injunctive relief; and \$10,000,000.00 in damages. (Amend. Compl., Doc. No. 7.) On March 8, 2021, Defendants filed the instant Motion to Dismiss the Amended Complaint. (MTD, Doc. No. 15.) In opposing the Motion, Plaintiffs also seek leave to file a Second Amended Complaint, so that they may add state-law emotional distress claims. (Doc. Nos. 19, 20.)

II. LEGAL STANDARDS

In deciding a motion to dismiss, I must conduct a two-part analysis. *Fowler v. PMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, I must accept Plaintiffs’ factual allegations, and disregard legal conclusions or mere recitations of elements. *Id.* I must then determine whether the facts alleged make out a “plausible” claim for relief. *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Accordingly, the burden is on Defendants to show that Plaintiffs have failed to allege facts sufficiently detailed to “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008). I

construe *pro se* filings liberally. *Hartmann v. Carroll*, 492 F.3d 478, 482 n. 8 (3d Cir. 2007).

III. FACTUAL ALLEGATIONS

Plaintiffs were tenants of Defendants—who are “engaged in the residential real estate business”—at a property built before 1978. (Amend. Compl. ¶ 9.) In leasing to Plaintiffs, Defendants apparently failed to provide lead paint disclosures required by federal law. (*Id.* at ¶ 23.) Although Plaintiffs hold forth at some length regarding the purposes of lead paint laws and the number of pre-1978 properties owned and managed by Defendants (even including an attached excel sheet of such properties), the Amended Complaint is almost devoid of factual allegations regarding the violation at issue here: Plaintiffs do not plead that they were actually exposed to lead paint while living at the property; that lead paint was present there at all; or that they have *in fact* suffered any physical injury from lead paint exposure. (See *id.* at ¶ 33 (“Defendants could and/or can cause . . . harm to Plaintiffs health”).) Indeed, the only injury described by the Plaintiffs is conclusory and implausible. (*Id.* at ¶ 34 (“Defendants action [failing to provide lead paint disclosures] caused permanent and irreversible psychological harm [to Plaintiffs]”).) When or how these vague injuries manifested is not stated. Plaintiffs also fail to allege: which of the properties described they actually inhabited; when they lived there; and when they were due the relevant lead disclosures.

IV. DISCUSSION

I will dismiss the Amended Complaint.

First, Plaintiffs Tiange Huang and Jing Lin cannot state a claim under the LHRA because they were merely residents, not lessees, of Defendants' property. The LHRA explicitly provides a cause of action only to the "purchaser or lessee," which does not include residents who were not parties to the lease agreement. *See 42 U.S.C. § 4852d(b)(3)* ("Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee"); *Roberts v. Hamer*, 655 F.3d 578, 583 (6th Cir. 2011) ("The [statutory] language plainly and expressly limits private recovery to a "purchaser or lessee" of target housing, and no one else."); *Reynolds v. PBG Enters., LLC*, 2011 WL 2678589, at *6 (E.D. Pa. Jul. 6, 2011) (same). Here, only Plaintiff Qiuyuan Huang was a party to the lease, in which the other Plaintiffs were designated merely as "occupants." (Lease, Doc. No. 15-1, Ex. 4 at 3); *Delaware Nation v. Pennsylvania*, 446 F.3d 140, 413 n. 2 (3d Cir. 2006) (District Court may consider documents attached to motion to dismiss whose authenticity is not disputed). Accordingly, Tiange Huang and Jing Lin have no cause of action under the LHRA.

Nor do Tiange Huang and Jing Lin have claims under the TSCA. That Act does not permit private parties to seek money damages from violators. *See Cudjoe ex rel. Cudjoe v. Dep't of Veterans Affs.*, 426 F.3d 241, 248 (3d Cir. 2005). Although the TSCA does permit private individuals to seek prospective relief, that right lasts only so long as they remain

resident in the violative property. *See N’Jai v. United States Environmental Protection Agency*, 705 Fed.App’x 126, 128 (3d Cir. 2017). Tiange Huang and Jing Lin are thus foreclosed from obtaining the relief sought under the TSCA, as they no longer live at Defendants’ property. (Amend. Compl. ¶ 9.) For the same reason, Plaintiff Qiuyuan Huang is also without a cause of action under the TSCA.

“This leaves only Plaintiff Qiuyuan Huang’s LHRA claim. I will dismiss this claim because Plaintiffs fail to allege adequately that Qiuyuan Huang suffered any “actual damages” caused by Defendants’ LHRA violation, as required by the statute. *See, e.g., Christian v. Warwick Realty, LLC*, 2014 WL 2434626, at *4 (D. R.I. May 29, 2014) (dismissing LHRA claim for failure to adequately allege damages); *Kaye v. Acme Investments, Inc.*, 2008 WL 5188712, at *3-4 (E.D. Mi. Dec. 8, 2008) (same); *see also McCready v. Main Street Trust, Inc.*, 2008 WL 2520239, at *3 (C.D. Ill. June 20, 2008) (granting summary judgment where plaintiffs “failed to allege any possible compensatory damages”). Plaintiffs’ allegation that Defendants’ violation “could and/or can cause permanent and/or irreversible harm of the Plaintiffs health” does not suffice. *See Kaye*, 2008 WL 5188712, at *5 (complaint failed to “set forth a plausible claim of physical injury, instead alleging only ‘possible exposure to lead ...’”).

Further, because Plaintiffs’ allegations of psychic harm are entirely conclusory, they are not sufficient. (*See Amend. Compl. ¶ 34* (“Defendants action caused permanent and irreversible psychological harm to the Plaintiffs that could long term affect the life of the Plaintiffs”)); *Fowler*, 578

F.3d at 209. And, even assuming *arguendo* that the psychic harm claims qualified as “well-pleaded facts,” they are so facially implausible that dismissal would still be called for. Plaintiff Qiuyuan Huang was informed of Defendants’ lead-paint disclosure duties in the lease agreement. (Lease, Doc. No. 15-1, Ex. 4 at 6 (detailing which disclosures were required, partly in bolded font).) Yet, he chose to move into the property knowing those disclosures had not been made, remaining there for months. Although this act did not waive Huang’s claim under the LHRA, it does render “dubious” his assertion that the lack of disclosure itself caused compensable psychological harm, as he chose to reside at the property despite already knowing of this failure. *See Kaye*, 2008 WL 5188712, at *5 (claims of emotional distress were “undermined” by plaintiff’s decision to continue residing in property after learning of neglected disclosure obligations).

Finally, I will not permit Plaintiffs to file their Second Amended Complaint, as doing so would be futile. *See Phillips v. Cty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008). Plaintiffs seek to amend to add state-law emotional distress claims, as these “were subconsciously left out [of the Amended Complaint] due to clerical errors.” (Resp. at 15.) These seem little more than a restatement of the dubious psychic harms Plaintiffs have already pled. As I have already determined that Plaintiffs’ federal claims must be dismissed, I would not exercise jurisdiction over these new state claims. *See* 28 U.S.C. § 1367(c)(3); *Elkadrawy v. Vanguard Grp., Inc.*, 584 F.3d 169, 174 (3d Cir. 2009).

V. CONCLUSION

In sum, the Amended Complaint fails to raise Plaintiffs' right to relief "above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The proposed Second Amended Complaint would do no better. Accordingly, I will dismiss the Amended Complaint and deny leave to amend further as futile.

AND NOW, this 26th day of May, 2021, it is hereby **ORDERED** that:

1. Defendants' Motion to Dismiss (Doc. No. 15) is **GRANTED**;
2. Plaintiffs' Amended Complaint (Doc. No. 7) is **DISMISSED with prejudice**;
3. Plaintiffs' Motion for Leave to file a Second Amended Complaint (Doc. No. 19) is **DENIED** as futile.
4. The Clerk of Court shall **CLOSE** this case.

AND IT IS SO ORDERED:

Dated: 5/26/2021 /s/ *Paul S. Diamond*

PAUL S. DIAMOND, J.

Appendix D

Pertinent Sections
From 24 C.F.R. Part 35, Subpart A
Disclosure of Known Lead-Based Paint and/or
Lead-Based Paint Hazards Upon
Sale or Lease of Residential Property

Sec. 35.80 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

Sec. 35.82 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

- (a) Sales of target housing at foreclosure.
- (b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a

federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(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 in which the lessor has previously disclosed all information required under Sec. 35.88 and where no new information described in Sec. 35.88 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

Sec. 35.84 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

Sec. 35.86 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

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Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means 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.

Lead-based paint free housing means target housing that has been found to be free of 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.

Lead-based paint hazard means 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 as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not

limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

- (1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies,

studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

Sec. 35.88 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to Sec. 35.82. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA -747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or

lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

(Approved by the Office of Management and Budget under control number 2070-0151)

[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

Sec. 35.90 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

(Approved by the Office of Management and Budget under control number 2070-0151)

[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

Sec. 35.92 Certification and acknowledgment of disclosure.

(a) Seller requirements. Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

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.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under section 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by Sec. 35.90(a); or

(ii) Waived the opportunity.

(6) When any agent is involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(b) Lessor requirements. Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When any agent is involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(c) Retention of certification and acknowledgment information.

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary

certification and acknowledgment language required under paragraphs (a) and (b) of this section.

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[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

Sec. 35.94 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under Sec. Sec. 35.88, 35.90, and 35.92.

(2) Ensure that the seller or lessor has performed all activities required under Sec. Sec. 35.88, 35.90, and 35.92, or personally ensure compliance with the requirements of Sec. Sec. 35.88, 35.90, and 35.92.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

(Approved by the Office of Management and Budget under control number 2070-0151)

[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

Sec. 35.96 Enforcement.

- (a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.
- (b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.
- (c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.
- (d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.
- (e) Failure or refusal to comply with Sec. Sec. 35.88 (disclosure requirements for sellers and lessors), Sec. 35.90 (opportunity to conduct an evaluation), Sec. 35.92 (certification and acknowledgment of disclosure), or Sec. 35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).
- (f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000.

Appendix E

**Pertinent Sections
From 40 C.F.R. Part 745 Subpart F
Disclosure of
Disclosure of Known Lead-Based Paint and/or
Lead-Based Paint Hazards Upon
Sale or Lease of Residential Property**

Sec. 745.100 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

Sec. 745.101 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

- (a) Sales of target housing at foreclosure.
- (b) Leases of target housing that have been found to be lead-based paint free by an inspector certified

under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(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 in which the lessor has previously disclosed all information required under Sec. 745.107 and where no new information described in Sec. 745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

Sec. 745.102 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

Sec. 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means 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.

Lead-based paint free housing means target housing that has been found to be free of 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.

Lead-based paint hazard means 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 as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

- (1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

Sec. 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to Sec. 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the

lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow

the purchaser or lessee an opportunity to review the information and possibly amend the offer.

Sec. 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

Sec. 745.113 Certification and acknowledgment of disclosure.

(a) Seller requirements. Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

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.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and

(a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by Sec. 745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(b) Lessor requirements. Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees

must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor as obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements,

to the best of their knowledge, along with the dates of signature.

(c) Retention of Certification and Acknowledgment Information.

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

Sec. 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under Sec. Sec. 745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities required under Sec. Sec. 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of Sec. Sec. 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

Sec. 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with Sec. 745.107 (disclosure requirements for sellers and lessors), Sec. 745.110 (opportunity to conduct an evaluation), Sec. 745.113 (certification and acknowledgment of disclosure), or Sec. 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than \$10,000.

[61 FR 9085, Mar. 6, 1996, as amended at 62 FR 35041, June 27, 1997]

Appendix F

**The Definitions of Words
Pertinent to the instant *Cafe*
from Samuel Johnson's
A Dictionary of the English Language,
1755 edition.**

CASE. *n.l.* [*caſus*, Lat.]

1. Condition with regard to outward circumstances.

Unworthy wretch, quoth he, of so great grace,
How dare I think such glory to attain?
These that have it attain'd, were in like *caſe*,
Quoth he, as wretched, and liv'd in like pain.

Fairy Queen.

Question your royal thoughts, make the *caſe*
yours;
Be now a father, and propole a ſon.

Shakſp. Henry IV. p. ii.

Some knew the face,
And all had heard the much lamented *caſe*.

Dryden.

These were the circumstances under which the
Corinthians then were, and the argument which the
apostle advances, is intended to reach their
particular *caſe*. *Atterbury.*

My youth may be made, as it never fails in
executions, a *caſe* of compassion.

Pope's Preface to his Works.

2. State of things.

He ſaith, that if there can be found ſuch an
inequality between man and man, as there is
between man and beast, or between ſoul and body, it

investeth a right of government, which seemeth rather an impossible *caſe*, than an untrue ſentence.

Bacon's Holy War.

Here was the *caſe*; an army of English, wasted and tired with a long winter's ſiege, engaged an army of a greater number than themſelves, fresh and in vigour.

Bacon.

I can but be a ſlave where-ever I am; ſo that taken or not taken, 'tis all a *caſe* to me. *L'Eſtrange.*

They are excellent in order to certain ends; he hath no need to uſe them, as the *caſe* now ſtands, being provided for with the provision of an angel.

Taylor's Holy Living.

Your parents did not produce you much into the world, whereby you have fewer ill impreſſions; but they failed, as is generally the *caſe*, in too much neglecting to cultivate your mind. *Swift.*

3. In phyſick; ſtate of the body.

It was well; for we had rather met with calms and contrary winds, than any tempeſts; for our ſick were many, and in very ill *caſe*. *Bacon.*

Chalybeate water ſeems to be a proper remedy in hypochondriacal *caſes*. *Arbuthnot on Aliments.*

4. In ludicrous language, condition with regard to leanness, or health.

Thou lieſt, moſt ignorant monſter, I am in *caſe* to juſtle a conſtable. *Shakesp. Tempeſt.*

Pray have but patienc till then, and when I am in little better *caſe*, I'll throw myſelf in the very mouth of you. *L'Eſtr.*

Quoth Ralph, I ſhould not, if I were
In *caſe* for action, now be here.

Hudibras, p. i. cant. iii.

For if the fire be faint, or out of *caſe*,

He will be copy'd in his famish'd race.

Dryden's Virgil.

The priest was pretty well in *case*,
And shew'd some humour in his face;
Look'd with an easy careleſs mien,
A perfect stranger to the spleen.

Swift.

5. Contingence.

The atheist, in *case* things should fall out contrary to his belief or expectation, hath made no provision for this *case*; if, contrary to his confidence, it should prove in the issue that there is a God, the man is lost and undone for ever.

Tillotson.

6. Question relating to particular persons or things.

Well do I find each man most wife in his own *case*.

Sidney.

It is strange, that the ancient fathers should not appeal to this judge, in all *cases*, it being so short and expedite a way for the ending of controversies.

Tillotson.

7. Representation of any fact or question.

If he be not apt to beat over matters, and to call up one thing, to prove and illustrate another, let him study the lawyers *cases*: so every defect of the mind may have a ſpecial receipt.

Bacon, Essay 51.

8. The variation of nouns.

The ſeveral changes which the noun undergoes in the Latin and Greek tongues, in the ſeveral numbers, are called *cases*, and are designed to expref the ſeveral views or relations under which the mind confidors things with regard to one another; and the variation of the noun for this purpose is called declenſion.

Clark's Latin Grammar.

9. *In case.* [nel *caso*, Ital.] If it ſhould happen; upon the ſupposition that: a form of ſpeech now little used.

For *in case* it be certain, hard it cannot be for them to shew us where we shall find it; that we may say these were the orders of the apostles. *Hooker, b. iii.*

A sure retreat to his forces, *in case* they should have an ill day, or unlucky chance in the field.

Bacon's Henvy VII.

This would be the accomplishment of their common felicity, *in case*, either by their evil destiny or advice, they suffered not the occasion to be lost.

Hayward.

CONTROVERSY. *n. f.* [controversia, Latin.]

1. Dispute; debate; agitation of contrary opinions: a dispute is commonly oral, and a controversy in writing.

How cometh it to pass that we are so rent with mutual contentions, and that the church is so much troubled? If men had been willing to learn, all these *controversies* might have died the very day they were first brought forth. *Hooker, b. i.*

Without *controversy* great is the mystery of godliness. *I Tim.*

Wild *controversy* then, which long had slept, Into the press from ruin'd cloisters leapt.

Denham.

This left no room for *controversy* about title, nor for encroachment on the right of others. *Locke.*

2. A suit in law.

If there be a *controversy* between men, and they come unto judgment, that the judges may judge them, then they shall justify the righteous and condemn the wicked. *Deut. XXV. I.*

3. A quarrel.

The Lord hath a *controversy* with the nations.

Jer. XXV. 31.

4. Opposition; enmity: this is an unusual sense.

The torrent roar'd, and we did buffet it
With lusty sinews; throwing it aside,
And stemming it with hearts of *controversy*.

Shak. Jul. Cœs.

E'QUITY. *n. f.* [*equite*, French; *aquitas*, Latin.]

1. Justice; right; honesty.

Foul subornation is predominant,
And *equity* exil'd your highnes' land.

Shaksp. Henry VI.

Christianity secures both the private interests of
men and the publik peace, enforcing all justice and
equity.
Tillotson.

2. Impartiality.

Liking their own somewhat better than other
mens, even because they are their own, they must in
equity allow us to be like unto them in this affection.

Hooker. b. iv. f. 13.

3. [In law.] The rules of decision observed by the court
of Chancery.

EXE'CUTIVE. *adj.* [from *execute*.]

1. Having the quality of executing or performing.

They are the nimblest, agil, strongest instruments,
fittest to be *executive* of the commands of the souls.

Hale.

2. Active; not deliberative; not legislative; having the
power to put in act the laws.

The Roman emperors were possessed of the whole
legislative as well as *executive* power.

Addison's Freeholder, №. 51.

Hobbes confounds the *executive* with the legislative power, though all well instituted states have ever placed them in different hands. *Swift.*

JUDICIAL. *adj.* [*judicium*, Latin.]

1. Practised in the distribution of publick justice.

What government can be without *judicial* proceedings? And what judicature without a religious oath? *Bentley's Serm.*

2. Inflicted on as a penalty.

The resistance of those will cause a *judicial* hardness. *South.*

LEGISLATIVE. *adj.* [from *legillator*.] Giving laws; law-giving.

Their *legislative* frenzy they repent,

Enacting it should make no precedent. *Denham.*

The poet is a kind of lawgiver, and those qualities are proper to the *legislative* style. *Dryden.*

POWER. *n.s.* [*pouvoir*, Fr.]

1. Command; authority; dominion; influence.

If law, authority and *pow'r* deny not,

It will go hard with poor Anthonio. *Shakesp.*

No man could ever have a just *power* over the life of another, by right of property in land. *Locke.*

Power is no blessing in itself, but when it is employ'd to protect the innocent. *Swift.*

2. Influence; prevalence upon.

This man had *power* with him, to draw him forth to his death. *Bacon's Essays.*

Dejected! no, it never shall be said,

That fate had *power* upon a Spartan soul;

My mind on its own centre stands unmov'd
And stable, as the fabrick of the world. *Dryden.*

3. Ability; force; reach.

That which moveth God to work is goodness, and
that which ordereth his work is wisdom, and that
which perfecteth his work is *power*. *Hooker.*

I have suffer'd in your woe;
Nor shall be wanting ought within my *pow'r*,
For your relief in my refreshing bow'r. *Dryden.*

You are still living to enjoy the blessings of all the
good you have performed, and many prayers that
your *power* of doing generous actions may be as
extended as your will. *Dry.*

It is not in the *power* of the most enlarged
understanding, to invent one new simple idea in the
mind, not taken in by the ways aforementioned. *Locke.*

'Tis not in the *power* of want or slavery to make
them miserable. *Addison's Guardian.*

Though it be not in our *power* to make affliction
no affliction; yet it is in our *power* to take off the edge
of it, by a steady view of those divine joys prepared for
us in another state. *Atterbury's Sermons.*

4. Strength; motive force.

Observing in ourselves, that we can at pleasure
move several parts of our bodies, which were at rest;
the effects also that natural bodies are able to
produce in one another, occurring every moment to
our senses, we both these ways get the idea of *power*.
Locke.

5. The moving force of an engine.

By understanding the true difference betwixt the
weight and the *power*, a man may add such a fitting
supplement to the strength of the *power*, that it shall
move any conceivable weight, though it should never

so much exceed that force, which the *power* is naturally endowed with. *Wilkins.*

6. Animal strength; natural strength.

Care, not fear; or fear not for themselves altered something the countenances of the two lovers: but so as any man might perceive, was rather an assembling of *powers* than dismayedness of courage. *Sidney, b. i.*

He died of great years, but of strong health and *powers*. *Bacon's Henry VII.*

7. Faculty of the mind.

If ever

You meet in some fresh cheek the *power* of fancy,
Then you shall know the wounds invisible,
That love's keen arrows make. *Shaksp.*

I was in the thought, they were not fairies, and yet the guiltiness of my mind, the sudden surprize of my *powers* drove the grossness of the foppery into a received belief. *Shaksp.*

In our little world, this soul of ours
Being only one, and to one body ty'd,
Doth use, on divers objects, divers *powers*;
And so are her effects diversify'd. *Davies.*

Maintain the empire of the mind over the body, and keep the appetites of the one in due subjection to the reasoning *powers* of the other.

Atterbury's Sermons.

The design of this science is to rescue our reasoning *powers* from their unhappy slavery and darkness. *Watts.*

8. Government; right of governing.

My labour

Honest and lawful, to deserve my food
Of those who have me in their civil *power*. *Milton.*

9. Sovereign; potentate.

'Tis surprising to consider with what heats these two *powers* have contested their title to the kingdom of Cyprus, that is in the hands of the Turk.

Addison's Remarks on Italy.

10. One invested with dominion.

After the tribulation of those days shall the sun be darkened, and the *powers* of the heavens shall be shaken.

Mat.

The fables turn'd some men to flow'rs,
And others did with brutish forms invest;
And did of others make celestial *pow'r's*,
Like angels, which still travel, yet still rest. *Davies.*

If there's a *pow'r* above us,
And that there is all nature cries aloud
Through all her works, he must delight in virtue.

Addil.

11. Divinity.

Merciful powers!

Restrain in me the cursed thoughts, that nature
Gives way to in repose. *Shakespeare's Macbeth.*

Cast down thyself, and only strive to raile
The glory of thy maker's sacred name;
Use all thy *pow'r's*, that blessed *pow'r* to praise,
Which gives thee *pow'r* to be and use the same.

Davies.

With indignation, thus he broke
His awful silence, and the *pow'r's* bespoke. *Dryden.*

Tell me,
What are the gods the better for this gold?
The wretch that offers from his wealthy store
These presents, bribes the *pow'r's* to give him
more. *Dryd.*

12. Host; army; military force.

He, to work him the more mischief, sent over his

brother Edward with a *power* of Scots and Redshanks into Ireland, where they got footing.

Spenser's State of Ireland.

Never such a *power*,

For any foreign preparation,
Was levied in the body of a land.

Shakesp. K. John.

Young Octavius and Mark Antony
Come down upon us with a mighty *power*,
Bending their expedition tow'r'd Philippi.

Shakesp.

Who leads his *power*?
Under whose government come they along?

Shakesp.

My heart, dear Harry,
Threw many a northward look, to see his father
Bring up his *pow'r*s; but he did long in vain.

Shakesp.

Gazellus, upon the coming of the bassa, valiantly issued forth with all his *power*, and gave him battle.

Knolles.

13. A large quantity; a great number. In low language: as, *a power of good things*.

WELFARE. *n. f.* [*well* and *fare*.] Happiness; success; prosperity.

If friends to a government forbear their assistance, they put it in the power of a few desperate men to ruin the *welfare* of those who are superior to them in strength and interest.

Add.

Discretion is the perfection of reason : cunning is a kind of instinct that only looks out after our immediate interest and *welfare*. *Addison's Spectator*.