LEAD BASED PAINT DISCLOSURE ADDENDUM

GENERAL COMMENTS:

A. **Use.** This form contains disclosures and certifications that are required in purchase and sale transactions involving residential property built prior to 1978. The purpose of the disclosure requirements is to advise potential buyers of the health hazards of lead-based paint (the use of which was banned in 1978), and to give buyers an opportunity to inspect the Property for lead-based paint hazards. These regulations exist to protect children from lead poisoning, which has been called the "number one environmental threat to the health of children in the United States."

B. **Brokers Are Responsible For Ensuring Compliance.** Any brokers involved in the transaction are responsible for ensuring that sellers are informed of these disclosure requirements and that sellers comply with the requirements.

C. **Exemptions.** The regulations apply to so-called "target housing," which consists of most housing built before 1978 except for: housing for the elderly; housing for persons with disabilities (unless children under 6 will live in it); and dwellings with no bedrooms such as studio apartments or individual rooms in a home. The regulations also do not apply to properties sold at foreclosure sales. If you are in doubt as to whether the regulations apply, then seek legal advice.

E. **Use Form 22J for Purchase and Sale Agreements.** Form 22J applies to purchase and sale agreements. Form 22J Lease should be used for lease/rental agreements for housing built before 1978.

F. **Summary of the Regulations' Disclosure Requirements.** In a nutshell, the regulations will require most Sellers of pre-1978 housing to:

1. Provide prospective Buyers with the EPA-approved pamphlet "Protect Your Family from Lead in Your Home" regarding lead hazards;
2. Give a specific "Lead Warning Statement" describing the health implications of lead exposure;
3. Disclose the presence of any lead based paint on the Property or advise that Seller has no knowledge of its presence;
4. List and provide all records and reports relating to the presence of lead based paint on the Property;
5. Provide Buyers a 10-day contingency period to perform a lead based paint inspection;
6. Obtain an acknowledgment from the Buyer that the pamphlet, disclosure statement and records have been received: and
7. If a broker is involved, there must be a statement that the broker has informed the owner of his/her obligations and that the broker is aware of his/her duty to ensure compliance with the regulations. This includes anyone receiving compensation, directly or indirectly, from Seller, so in most cases, the Buyer Broker should sign the certification along with the Listing Broker.

G. **Timing of the Disclosures.** The disclosures must be given before the "Buyer becomes obligated" under a Purchase and Sale Agreement. If Seller's disclosures are given after mutual acceptance, then the Buyer must be given an opportunity to "amend the offer." As a practical matter, this means that because Buyers typically write the initial offer, and most Buyers will not know whether the Property has a lead-based paint problem (and may not even know if the house was built before 1978), Buyers will not be able to include the disclosures as a part of their offer.

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Then when Seller responds to the offer and attaches this disclosure statement, the Buyer must be given an opportunity to amend the offer, i.e., to make a counteroffer. This could lead to an offer-counteroffer situation in almost every transaction involving pre-1978 housing.

Sellers can fill out Form 22J and attach the form as a supplement to the listing. When the Buyer writes the offer, the Buyer can use the Form 22J that was previously filled out by the Seller.

In addition, the Seller Disclosure Statement (NWMLS Form 17) includes the lead-based paint disclosures required by these regulations. Now, if a Buyer obtains the Form 17 before making an offer, the Buyer can check the appropriate Seller-disclosure boxes on Form 22J in the same manner that Seller did on Form 17. Then, when Seller responds to the Buyer's offer, Seller can affirm the lead-based paint disclosures by simply signing Form 22J.

Note, that even though Seller may have made the lead-based paint disclosures in Form 17, the disclosure Form 22J still must be attached to the Purchase and Sale Agreement because the Buyer (1) still has to receive the Lead Warning Statement and (2) must be given an opportunity to perform an inspection. Also, the brokers still have to acknowledge their responsibility to "ensure compliance." In short, you must use Form 22J and provide the EPA pamphlet in transactions involving pre-1978 housing.

H. **Records Must Be Retained.** Sellers and brokers must retain the disclosures and the Buyer's acknowledgment for at least three years after closing.

I. **Penalties.** The failure to comply with the regulations will not void the contract (though the Buyer will have a right to amend the offer). A Buyer who does not receive the disclosures can seek civil remedies, including triple damages, attorneys' fees and costs. Further, "knowing" violations can lead to heavy civil fines and even criminal penalties.

J. **These Instructions Are Just a Summary of the Regulations.** These instructions merely provide an overview of the key points of the regulations. All brokers should be sure to familiarize themselves with the regulations' requirement, since you are charged with "ensuring compliance" with them.

ASSISTANCE FILLING IN THE BLANKS: The following numbers refer to the numbers on the sample form shown in this Manual.

1. **Date of Agreement.** Insert the same date that is at the top of the first page of the Purchase and Sale Agreement.
2. **Buyer.** Insert the Buyer's name(s) as it is on the Agreement.
3. **Seller.** Insert Seller's name(s) as it is on the Agreement.
4. **Property.** Insert the Property address as it is on the Agreement.
5. **Disclosure — Presence of Lead-Based Paint.** Seller should check the appropriate box disclosing that Seller has actual knowledge that lead-based paint or lead-based paint hazards are present or alternatively, that Seller has no actual knowledge of them. Note that Seller is not required to do any testing to determine if there is lead-based paint on the Property. Seller simply discloses whether or not Seller knows that there is lead-based paint or a lead-based paint "hazard" (e.g., exposed, chipping or peeling lead-based paint that could be ingested by children).

   If Seller checks the box indicating that he/she has knowledge of lead-based paint, then Seller should explain the nature and location of the lead based paint and/or lead-based paint hazard on the blank lines provided.

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6. **Reports and Records.** Seller also must list all records and reports relating to the presence of lead-based paint on the Property that are "available to" (e.g., reasonably obtainable by) the Seller at the time of the disclosure, and must provide copies to the prospective Buyer. In multi-family properties, this includes reports on the paint histories of units in the "target housing" other than the particular unit for sale or lease. HUD and EPA have indicated that this requirement does not include medical histories or reports on previous occupants of the target housing.

   Seller should check the appropriate box indicating whether Seller has any such reports and confirming that they have been provided to Buyer.

7. **Seller's Signature and Date.** Seller must execute the Lead-Based Paint Disclosure in the space provided.

8. **Initials.** Buyers and Sellers should initial in these spaces.

9. **Buyer's Acknowledgment.** Buyer must initial to confirm that Buyer has received the Seller's Disclosure information as marked on the first page of Form 22J (including explanations and documents (if any)) and also initial to confirm receipt of the pamphlet "Protect Your Family from Lead in Your Home."

10. **Buyer's Opportunity to Inspect.** Check whether Buyer accepts or waives the opportunity to conduct a risk assessment or inspection of the Property for lead-based paint and/or lead-based paint hazards. Buyer must be offered a 10-day inspection period, which can be waived, lengthened, shortened or otherwise modified according to the parties' agreement.

    Note: The inspection procedures in this form are similar to the Inspection Addendum (Form 35). Buyer must get an inspection and if any adverse conditions are identified, Buyer must advise Seller of the nature of the conditions and (unlike the Inspection Addendum) give Seller a copy of the inspection report. Seller can then decide whether to repair the conditions. If Seller will not repair them, then Buyer can either terminate the Agreement or purchase the Property without the repairs having been accomplished by Seller.

11. **Time Limit — Buyer's Disapproval.** Insert in the number of days that Buyer has to give written notice of disapproval of the inspection report. If this notice is not timely given, the inspection contingency is waived and Buyer will have to purchase the Property without Seller correcting the conditions. Buyer's notice must specifically identify the conditions to which Buyer objects and also must include a copy of the portions of the report that contains the conditions to which Buyer objects.

12. **Time Limit — Seller's Notice.** Insert the number of days Seller has (after Buyer's disapproval notice) to give notice that Seller will repair the conditions identified in Buyer's notice.

13. **Time Limit — Buyer's Second Notice.** If Seller does not give notice that Seller will repair the conditions identified in Buyer's notice, Buyer can elect to terminate the Purchase and Sale Agreement within the number of days filled in here. If Buyer fails to give a termination notice within this time limit, Buyer will have to proceed with the purchase without the repairs being made.

14. **Buyer Signature and Date.** Buyer must execute the Lead-Based Paint Disclosure in the space provided.

15. **Buyer Broker's Signature and Date.** Brokers have duties under federal law to ensure that Seller complies with the lead-based paint disclosure requirements. Buyer Broker must execute Form 22J in the space provided.

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16. **Listing Broker's Signature and Date.** Brokers have duties under federal law to ensure that Seller complies with the lead-based paint disclosure requirements. Listing Broker must execute Form 22J in the space provided.

17. **Initials.** Buyers and Sellers should initial in these spaces.

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

The following is part of the Purchase and Sale Agreement dated ______ 1 ______

between ______ 2 ______ 2 ______ ("Buyer")
Buyer Buyer

and ______ 3 ______ 3 ______ ("Seller")
Seller Seller

concerning ______ 4 ______ (the "Property").
Address City State Zip

Lead Warning Statement

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.

NOTE: In the event of pre-closing possession of more than 100 days by Buyer, the term Buyer also means Tenant.

______

Seller's Disclosure

5 (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

- ❑ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

______

______

- ❑ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

6 (b) Records and reports available to the Seller (check one below):

- ❑ Seller has provided the Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

______

______

- ❑ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Seller has reviewed the information above and certifies, to the best of Seller's knowledge, that the statements made and information provided by Seller are true and accurate.

7		7	
Seller	Date	Seller	Date

8		8		8		8	
Buyer Initials	Date	Buyer Initials	Date	Seller Initials	Date	Seller Initials	Date

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS
Continued

Buyer's Acknowledgment

(c) Buyer has received the above Seller's Disclosure and all documents (if any). 9 ______ Buyer Initials 9 ______ Buyer Initials

(d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*. 9 ______ Buyer Initials 9 ______ Buyer Initials

10 (e) Buyer has (check one below):

- ❑ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

- ❑ Accepted an opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards on the following terms and conditions:

  This Agreement is conditioned upon a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, to be performed by a risk assessor or inspector at Buyer's expense. (Intact lead-based paint that is in good condition is not necessarily a hazard).

  This contingency shall conclusively be deemed satisfied (waived) unless Buyer gives written notice of disapproval of the risk assessment or inspection to Seller within ___11___ (10 days if not filled in) after receiving this Disclosure. Buyer's notice must identify the specific existing deficiencies and corrections needed and must include a copy of the inspection and/or risk assessment report.

  Seller may, at Seller's option, within ___12___ days (3 days if not filled in) after Seller's receipt of Buyer's disapproval notice, give written notice that Seller will correct the conditions identified by Buyer. If Seller agrees to correct the conditions identified by Buyer, then it shall be accomplished at Seller's expense prior to the Closing Date, and Seller shall provide Buyer with certification from a risk assessor or inspector demonstrating that the condition(s) has been remedied prior to the Closing Date. In lieu of correction, the parties may agree on any other remedy for the disapproved condition(s), including but not limited to adjustments to the Purchase Price. If an agreement on non-repair remedies is secured in writing before the expiration of the time period set forth in this subparagraph, then this contingency will be deemed satisfied.

  If Seller does not give notice that Seller will correct the conditions identified in Buyer's risk assessment or inspection, or if the parties cannot reach an agreement on alternative remedies, then Buyer may elect to give notice of termination of this Agreement within ___13___ days (3 days if not filled in) after expiration of the time limit or delivery of Seller's notice pursuant to the preceding paragraph, whichever occurs first. The Earnest Money shall then be returned to Buyer and the parties shall have no further obligations to each other. Buyer's failure to give a written notice of termination means that Buyer will be required to purchase the Property without Seller having corrected the conditions identified in Buyer's risk assessment or inspection and without any alternative remedy for those conditions.

Buyer has reviewed the information above and certifies, to the best of Buyer's knowledge, that the statements made by Buyer are true and accurate.

14 ______________________________
Buyer Date

14 ______________________________
Buyer Date

Brokers' Acknowledgment

Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852(d) and are aware of their responsibility to ensure compliance.

15 ______________________________
Buyer Broker Date

16 ______________________________
Listing Broker Date

17 ______________
Buyer Initials Date

17 ______________
Buyer Initials Date

17 ______________
Seller Initials Date

17 ______________
Seller Initials Date