

1. If an owner performs an XRF inspection in an apartment (due to the new inspection requirement, not because of the condition since there is no peeling paint and the apartment is well maintained), and subsequently there is a positive reading, what is the owner obligated to do at that point. There is no violation, no lead dust present, and nothing to repair otherwise, there is only a positive XRF reading where an intact subsurface contains lead-based paint. Is the owner required to take affirmative steps, such as remediation? What if there is a child in the unit under 6 in this circumstance must there be remediation? Does the situation require displacing tenants and exposing the lead-based paint? Would the owner be expected to remediate at turnover or just monitor? Can the areas be left alone, but just checked annually to ensure they remain in good condition?

After the owner completes the XRF testing required under Local Law 31 of 2020, regardless of the results, the owner must provide the results of the XRF testing to the tenant/occupant. (Note that there are also federal disclosure requirements that the owner should be aware of.) If there are positive results and the paint is intact, the owner is not required to, under any current local law, abate the lead-based paint; however the owner may want to refer to these positive test results to know where paint may become a lead-based paint hazard in the future and pay close attention to those when performing the annual visual assessment in units where a child under 6 resides and the activities required at turnover. Additionally, anytime work is done that would impact these areas that tested positive for lead-based paint, the owner must use EPA certified contractors and safe work practices, under both federal law and Local Law 1.

Reminder that when a dwelling unit changes tenants, owners are required under Local Law 1 to complete certain lead-based paint activities focused on making the unit safe for a new tenant and before the new tenant takes occupancy (regardless of whether the new tenant has a child at the time of initial occupancy). This is referred to as “turnover.”

Owners must:

- Remediate all lead-based paint hazards and any such underlying defects, when such underlying defects exist. At a minimum this would mean wet scrape and paint.
- Provide for the **removal of lead-based paint** on chewable surfaces with evidence of teeth marks or encapsulate the surface with a hard, puncture resistant encapsulant.
- Provide for the **removal of all lead-based paint** on friction surfaces on all doors and door frames.
- Provide for the **removal of all lead-based paint** on frictions surfaces on all windows or provide for the installation of replacement window channels or sliders on the friction surfaces.
- Make all bare floors, windowsills, and window wells in the dwelling unit smooth and cleanable.

All the work must be done following safe work practices. Owners must then certify compliance with the turnover requirements on the [Lease/Commencement of Occupancy Notice for Prevention of Lead-Based Paint Hazards \(Contrato/Comienzo de Ocupación y Medidas de Precaución con los Peligros en la Pintura-Encuesta Respecto al Niño\)](#) provided to the new tenant with the lease (and at lease renewal) and provide documentation to the new tenant upon request along with a copy of the [Lead Paint Hazards in the Home \(Peligros de la Pintura con Plomo en el Hogar\)](#) pamphlet. HPD has created sample forms for an owner to document the turnover inspection was completed: see the [Sample Forms for Turnover Vacancy Compliance](#)

2. Can a resolution to the XRF lead reading be to put encapsulation paint on top of where there is lead? Does HPD have a recommendation for how to resolve the lead issues without major renovation in each of the apartments and common areas as the expenses they are so outrageously high it will push property owners out if full remediation is necessary.

Attached is the HUD Guideline regarding Abatement by Encapsulation . It may help an owner understand the pros and cons about using encapsulation and the limits about where and how it can be used. If the owner's intent is to abate the lead-based paint in the apartment and they may want to use encapsulation or enclosure (also known as containment) as a part of that abatement, they should also be aware of the exemption application process through HPD.

Encapsulation and enclosure require ongoing monitoring because they may fail and are impacted by building conditions. Owners who use this form of abatement can apply to HPD for a Lead Safe exemption status and it requires an ongoing monitoring plan and commitment to monitor as a part of the application. So there are maintenance costs associated with encapsulation and enclosure . If an owner chooses to permanently remove the lead-based paint, the owner could instead apply for a Lead-Free exemption status and this does not require ongoing monitoring.

It must be understood that renovation or abatement does not automatically remove the owner from the requirements under Local Law 1 because there is the presumption of lead-based paint unless the owner applies for and is granted the exemption status. Here is the link to the exemption application and instructions which also gives an owner more information about encapsulation: <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/lead-ll1-exemption-application.pdf>

We had a lead test, all negative inside the apartment, except in the window well below window (basically exposed to the outside). So when window is closed, the area is not within the apartment. Does this still require remediation or any action under the new law?

As mentioned, Local Law 31 does not require immediate abatement if the test results are positive. The window well is part of the window frame and considered a part of the interior window surface for XRF testing and dust wipes. If the paint on the well is deteriorated/peeling, HPD inspectors will test it for lead-based paint as a part of the HPD inspection process when a child under 6 resides in the unit. Upon turnover/vacancy, if any part of the window friction surface (ex. that touches the moving parts of the window) tests positive for lead-based paint, an abatement is required.

If there is missing information or missing documentation from a lead audit what is the penalty to the owner?

HPD will issue violations to the owner for the failure to maintain records. HPD may seek civil penalties in Housing Court. Failure to maintain documentation as required carries a civil penalty of no less than \$1,000 and not more than \$5,000 for this violation. Failure to provide turnover records may also result in a violation for each apartment where this is determined, and the penalty is \$1,500 for each apartment where compliance cannot be verified. Inspections

performed at the building as a part of the audit process because records were not provided may also result in additional violations and penalties.

3. We have buildings that are garden style apartments that can't register with HPD e certification. Are they going to fix that? How are we supposed to register them?

All properties can be registered annually, including garden apartments. eCertification is a separate process and involves certification of correction for issued violations. We will include these properties in eCertification when we upgrade that application.

4. The window guards slide stated one exception to the window guard rule is **"In buildings with fire escapes the window guard must be left off one window in each ground floor apartment so that the window can be used as an emergency exit."** What does this mean?

This means that in buildings with fire escapes, one window (remote from the apartment entrance door) in each ground floor apartment can't have a window guard.

What is the purpose?

The purpose is to provide a second means of egress if the tenant can't exit via the apartment entrance door.

Does it mean all ground floor apartments require at least one window must not have a window guard?

Yes, in buildings with fire escapes.

Is this so if needed during a fire, one window can be used to exit the apt without the obstruction of a window guard?

Yes.

5. Mario stated that hallway windows that do not open would still need window guards. I have hallway windows that do not slide open at all. The only way a child can fall out the window is if the child broke through the wired glass. I believe these windows do not need window guards. Please confirm.

In a building where a child under 11 resides, the public hall windows are required to have window guards. If the windows are fixed pane windows(non-openable) the owner of the building would have to apply to DOHMH for a "variance" exempting the building from the need to install window guards in the public hall windows cited in the variance. This assumes that the installation of the fixed pane windows were signed off by DOB. DOHMH Window Guard Variance Application attached.

8. LL31 - The slides say that the LL31 inspection must take place within 5 years of the effective date of the law (by August 9, 2025) or within one year if a child under the age of 6 comes to reside in the unit (whichever is sooner). I thought it also had to be done at turnover also but maybe I am wrong. Please confirm if LL31 does not have to be performed at turnover.

LL31 requirements must be met within the time frames stated above. This requirement to XRF test is independent from the turnover requirements; even if a unit does NOT turnover in the next five years, you are still required to comply with Local Law 31 within that period.