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# BANKER & TRADESMAN

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[MY ACCOUNT](#)

- ADVANCED SEARCH
- NEWS**
- Front Page
  - The Teller
  - Editorial and Opinion
  - Profile in Commerce
  - Banking & Lending
  - Commercial & Industrial
  - Residential Real Estate
  - Insurance
  - By the Numbers
  - People
  - Tech in the Trenches
  - Real Estate Records
  - Credit Records
  - Online Podcast
  - NATIONAL NEWS

## Insurance

### Insurers Won't Touch Lead, So Landlords Live in Legal Limbo

By *Laura Schreier*  
*Banker & Tradesman Staff Writer*

Lead contamination lawsuits still fly back and forth between tenants and landlords, and woe to those property owners who don't have insurance to cover the costs.

But that's the trouble – smelling a bad risk, insurance companies often don't write for lead paint liability, or are extremely picky about who they'll cover. And many landlords simply go without coverage, trusting their lead remediation efforts will protect them if someone tries to sue.

Alan H. Segal, a Needham-based attorney who handles tenant-landlord lead disputes, says while many property owners do have lead liability insurance, "If there's no coverage, then the landlord is in big trouble."



Alan H. Segal

Defense fees will cost about \$40,000-\$50,000, not to mention awards if the ruling sides with the tenant – those awards are often also in the tens of thousands of dollars, Segal said.

Major insurers like Travelers, Liberty Mutual and The Hartford keep out of it entirely by simply not offering coverage for any lawsuits involving lead contamination.

XL Insurance offers a lead paint option in its environmental liability coverage, but only to people who have made efforts to clean up lead contamination and who haven't been sued, said Mary Ann Susavidge, senior vice president with XL.

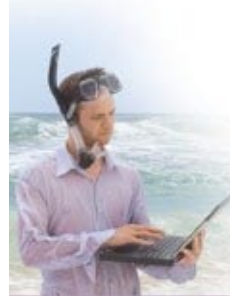
But most people only try to get coverage after they've already had claims brought against them. XL usually shoots them down.

"It's like insuring a building that's already on fire," Susavidge said.

Lead-contaminated paint was commonly used in buildings before 1980, and plenty of Massachusetts housing stock is full of the stuff. By law, landlords must clean up the contamination if a child younger than 6 lives in the building. Public programs offer some funding, but that doesn't cover everyone – and many property owners can't or won't pay for the cleanup.

"I bet three-quarters of the housing has lead right now," said Allan Hebert of the Massachusetts Rental Housing Assoc. Hebert doesn't know of any landlord who has lead

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paint coverage because it's not offered on standard insurance policies.

While many landlords have taken steps to remediate, they do not technically need to unless they have a young child living on the premises. Housing laws forbid landlords from discriminating against families with children, but attorney Segal said that doesn't stop some of them.

"You've got the wise guys who say, 'I'm not going to spend the money to do it, but I'm sure as hell not going to rent to someone who has a child under 6,'" Segal said.

'Wise guys' presumably includes Bridgeport, Conn., landlord Richie DePerle.

"I wouldn't rent to anybody with a kid, is one way of doing it," DePerle said. "I don't care if they don't like it; let them issue me an insurance policy that protects me."

DePerle has done lead remediation for some of his buildings, but those steps don't always solve landlords' problems, he said, because your building can still test positive for lead afterward. And even if a tenant has elevated lead levels in his or her blood, that contamination could have come from a number of sources: school, grandma's house, the tenant's former home – even imported toys or jewelry.

Martin Wood is president of the Institute for Environmental Education, a Wilmington-based company that teaches environmental cleanup procedures. He said lead remediation can be pricey – it includes testing, the cleanup itself, and re-testing afterward. But the state is making it easier for property owners to do their own remediation, allowing them to take a course, do their own testing and get a certificate that to prove they did the work.

Wood said he doesn't know of any lawsuits against landlords who've followed all the rules and done the remediation, but the possibility of legal action still hovers over landlords' uninsured heads.

"There's a lot of anxiety," he said.

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