

**REPORT OF THE
STATE CORPORATION COMMISSION ON**

**ISSUES RELATING TO
PROPERTY INSURANCE
AND LEAD POISONING
RISKS AND LIABILITY**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



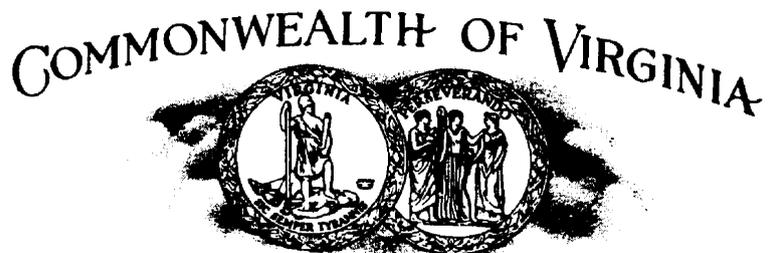
SENATE DOCUMENT NO. 3

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

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September 20, 1999

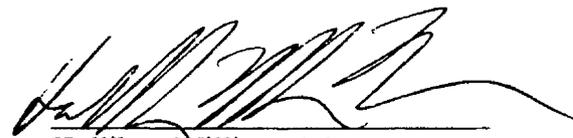
TO: The Honorable James S. Gilmore III
 Governor of Virginia
 and
 The General Assembly of Virginia

We are pleased to transmit this Report of the State Corporation Commission on Issues Relating to Property Insurance and Lead Poisoning Risks and Liability.

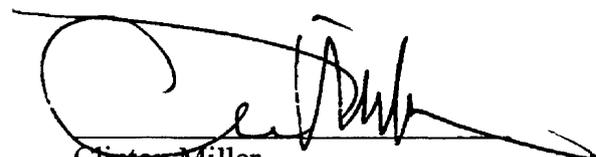
Respectfully submitted,



Theodore V. Morrison, Jr.
Chairman



Hullihen Williams Moore
Commissioner



Clinton Miller
Commissioner

Table of Contents

EXECUTIVE SUMMARY	1
PURPOSE OF STUDY	1
FINDINGS	1
RECOMMENDATIONS	2
SENATE JOINT RESOLUTION NO. 393.....	3
LEGISLATIVE REQUEST	4
DEFINITIONS.....	4
BACKGROUND.....	5
STUDY METHODOLOGY.....	6
SURVEY RESULTS.....	7
INSURANCE COMPANY SURVEYS	7
PROPERTY MANAGER SURVEYS.....	9
REALTORS' COMMENTS	10
OTHER STATES' LAWS	10
<u>Maine</u>	10
<u>Maryland</u>	11
<u>Massachusetts</u>	12
<u>Vermont</u>	13
CONCLUSION	14
RECOMMENDATIONS.....	14
APPENDIX 1	15
APPENDIX 2	16
APPENDIX 3	18

Executive Summary

Purpose of Study

The State Corporation Commission was requested by the 1999 General Assembly, pursuant to Senate Joint Resolution No. 393, to study issues relating to property insurance and lead poisoning risks and liability. The study was requested because, among other reasons, the Joint Subcommittee Studying Lead-Based Paint Abatement received testimony from real estate professionals that housing insurance policies consistently include clauses excluding lead poisoning risks for older houses and multiple family units. Furthermore, the study resolution noted that Virginia has no standards for lead-risk reduction or abatement or mechanisms to protect the buyers and renters and the real estate professionals with whom they do business from potential and devastating illnesses and liabilities. The SCC was requested to obtain input from commercial property owners and managers and other real estate professionals and appropriate professional organizations as well as representatives of the insurance industry.

In order to comply with the study request, the Bureau developed a study plan to solicit information from commercial property owners and managers and insurance companies. Responses were received from 94 companies representing 61% of the commercial multiperil market and 59% of the liability insurance market in Virginia. Responses were received from 135 property owners and managers. Two responses were received from realtors.

Findings

Based on the information received from insurance companies actively writing habitational dwellings in Virginia, the majority of companies currently writing habitational risks held for rental exclude coverage for claims arising from lead-based poisoning. This could have the appearance of indicating that there is an availability problem for coverage for lead-based poisoning for the owners of the properties. Coverage is excluded from most policies issued to property owners with units constructed prior to 1978. Property owners are not able to “buy-back” the coverage for an additional premium, thus exposing them to increased liabilities.

Based on the information received from property owners and managers, most do not have insurance for lead-based poisoning. Very few owners/managers have attempted to obtain the coverage. The vast majority of respondents to the survey have properties that were constructed prior to 1978. Additionally, relatively few of the respondents have performed any lead mitigation work to the units they own or

manage; however, only two of the respondents indicated that they or their companies had been sued for lead poisoning. The fact that only two of the respondents have had a claim made against them may account for the small number of respondents who have tried to purchase coverage for lead poisoning.

Several states have enacted laws addressing lead in habitational dwellings held for rental. Maine, Maryland, Massachusetts, and Vermont have implemented different programs to address childhood lead poisoning.

Recommendations

Based on the answers given by insurance companies actively writing habitational dwelling insurance in Virginia, the Bureau believes that coverage for lead-based poisoning risks may become more available if standards covering lead-based poisoning hazards and mitigation requirements are promulgated including independent verification procedures. The Joint Subcommittee Studying Lead Poisoning Prevention may wish to make such recommendations in its report to the General Assembly. Additionally, if standards are adopted, this issue should be revisited several years after the adoption of such standards to determine if insurance coverage has become more available. At that time, the Joint Subcommittee, or any successor thereof, may wish to conduct an analysis of the legal climate in Virginia to determine if any additional recommendations are necessary such as setting caps on liability for owners and real estate professionals.

SENATE JOINT RESOLUTION NO. 393

Requesting the State Corporation Commission to study issues relating to property insurance and lead poisoning risks and liability.

Agreed to by the Senate, February 4, 1999

Agreed to by the House of Delegates, February 15, 1999

WHEREAS, the Joint Subcommittee Studying Lead-Based Paint Abatement has received testimony and data on the interaction between the federal real estate disclosure requirements and the risk of liability for real estate professionals and property owners; and

WHEREAS, real estate professionals have testified that the federal lead disclosure requirements interact with their ethical and constitutional duties not to discriminate against families with children to provide a catch-22; and

WHEREAS, real estate professionals note that the mere requirement of disclosure to the renter or prospective buyer does not, in any way, reduce or eliminate the real estate professional's potential for liability; and

WHEREAS, these professionals also aver that housing insurance policies consistently include clauses excluding lead poisoning risks for older houses and multiple family units; and

WHEREAS, Virginia currently has no standards for lead-risk reduction or abatement or mechanisms to protect the buyers and renters who are parents of young children and the professionals with whom they do business from potential and devastating illnesses and liabilities; and

WHEREAS, thus commercial real estate owners and real estate professionals are unable to obtain guidance or protection from the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the State Corporation Commission be requested to study issues relating to property insurance and lead-poisoning risks and liability. In conducting this study, the State Corporation Commission shall obtain input from commercial property owners and managers and other real estate professionals and appropriate professional organizations as well as representatives of the insurance industry. The State Corporation Commission shall provide a preliminary report to the Joint Subcommittee Studying Lead Poisoning Prevention by September 30, 1999.

All agencies of the Commonwealth shall provide assistance to the State Corporation Commission for this study, upon request.

The State Corporation Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Legislative Request

The State Corporation Commission was requested by the 1999 General Assembly, pursuant to Senate Joint Resolution No. 393, to study issues relating to property insurance and lead poisoning risks and liability. As stated in the resolution, this study was requested because, among other reasons:

- a. The Joint Subcommittee Studying Lead-Based Paint Abatement has received testimony from real estate professionals that housing insurance policies consistently include clauses excluding lead poisoning risks for older houses and multiple family units; and
- b. Virginia has no standards for lead-risk reduction or abatement or mechanisms to protect the buyers and renters and the professionals with whom they do business from potential and devastating illnesses and liabilities.

The study resolution requested the State Corporation Commission (SCC) to study issues relating to property insurance and lead-poisoning risks and liability. The SCC was requested to obtain input from commercial property owners and managers and other real estate professionals and appropriate professional organizations as well as representatives of the insurance industry.

Definitions

For the purposes of this study, the following terms and their corresponding meanings are used in the report and in the surveys:

- *Commercial property* means a habitational property held for rental. This includes single family homes, multi-family homes (one to four units), condominiums, and apartments.
- *Liability insurance* means insurance covering legal liability for personal injury or property damage written on a monoline basis (i.e., not packaged with other insurance coverages).
- *Businessowners or multiperil liability insurance* means insurance covering legal liability for personal injury or property damage written in conjunction with other property insurance coverages such as fire insurance, inland marine insurance, or boiler and machinery insurance (a package policy).

Background

In 1978, the Consumer Product Safety Commission banned the use of lead in excess of 0.6% by weight in the manufacturing of residential paint. An estimated 64 million housing units, approximately 80% of housing built before 1978, still contain some lead-based paint.¹ As a result, there has been a recent focus on reduction, containment, and removal of lead hazards in the nation's older housing supply.

Because a good portion of the nation's housing supply consists of rental properties, particularly in urban areas, the financial responsibility of a rental property owner becomes a major issue. When a child is lead-poisoned in a rental property, damages often exist for medical, relocation, special education, lost earning potential, and pain and suffering costs. In the absence of a no-fault system, the only recourse for victim compensation is the tort liability system.

With the increased potential for being sued, many rental property owners and managers have looked to their property and casualty insurance companies for coverage for lead-poisoning claims. However, because of a growing concern caused by periodic enormous awards against landlords, insurance companies have been concerned about the potential exposures presented by covering lead-poisoning liability insurance. Insurers have taken the position that the presence of lead paint in a rental dwelling constitutes a "known loss" and is thus uninsurable. As a result, insurance companies have resorted to the use of lead liability exclusions, selective underwriting of risks to avoid older housing units, or withdrawing from the habitational insurance market to control their exposure to loss. This combination of circumstances has created the appearance of an availability problem for coverage for property owners with units constructed prior to 1978, whether or not there are known lead-based paint exposures.

There have been numerous studies performed in the past seven years focusing on safe, cost-effective, incentive-based control of lead-based paint hazards. Of significance is the report of the Lead-Based Paint Hazard Reduction and Financing Task Force titled "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing." In this report, the drafters reached the conclusion that there are no simple solutions.² The report states that the various dimensions of the lead-based paint problem are interrelated and that "it is not productive nor effective to intervene

¹ Jackson L. Anderson, Jr., "Lead-Based Paint Hazard Insurability Addressed," *National Underwriter*, 2/24/1997, p. 45-46.

² "Putting The Pieces Together: Controlling Lead Hazards In The Nation's Housing," *Lead-Based Paint Hazard Reduction and Financing Task Force*, HUD-1542-LBP: June 1995, p. 7.

in one part of the system and disregard others.”³ The task force concluded that many of the following issues are linked:

- Without standards of hazard control, property owners do not know what measures they need to take to protect children from lead hazards.
- Standards that fail to target lead-based paint hazards or to achieve needed protections cost-effectively are counterproductive: if the standards for hazard control are unnecessarily costly, many owners will not be able to afford them.
- The lack of standards for hazard control discourages insurers from offering policies. If owners cannot get insurance, children with elevated blood levels are less likely to get compensation.
- Conversely, if the standards are not health-protective, children will be left at risk and insurers will be reluctant to provide insurance.⁴

The task force’s report outlined the need to work towards a multi-faceted solution. This study will focus on one piece of the overall problem: the availability of liability insurance to property owners and managers, and measures to increase the availability of this coverage.

Study Methodology

In order to comply with the study request, the Bureau developed a study plan to solicit information from commercial property owners and managers and insurance companies.

The Bureau enlisted the aid of the Virginia Association of Realtors and the Virginia Apartment Managers Association to develop a list of commercial property owners and managers from whom to obtain information. Additionally, the Virginia Association of Realtors published a request in its weekly newsletter for comments regarding lead poisoning risks and liability exposures to realtors. The Virginia Association of Realtors provided a listing of 473 individuals with a property management designation. These 473 individuals work individually or for companies in 331 separate locations across the Commonwealth. The Virginia Apartment Managers Association provided a list with more than 500 of its apartment manager members. Surveys were sent out to 433 of the associations’ combined members. See Appendix 1 for a sample of the survey.

³ *Ibid.*, p. 7.

⁴ *Ibid.*, p. 7.

The Bureau used licensed insurance company lists and market share information to develop a group of insurance companies to survey. Using this list, the Bureau sent 152 surveys to insurance companies representing 90% of the commercial liability insurance marketplace and the commercial businessowners liability marketplace in Virginia. The purpose of the survey was to determine the availability of insurance coverage for lead-based paint liability insurance. The insurance company survey also gathered general information from companies which either do not write insurance for habitational risks or which exclude coverage for lead-based paint poisoning to determine whether any measures could be taken to encourage insurers to provide this coverage in the future. See Appendix 2 for a sample of the survey.

Survey Results

Insurance Company Surveys

Responses were received from 94 companies representing 61% of the commercial multiperil market and 59% of the liability insurance market in Virginia⁵. Of the 94 respondents, 24 indicated that they do not write liability insurance for habitational risks. When asked why they do not write the coverage, only 2 companies indicated that it was because of the uncertainty surrounding habitational risks and environmental (lead) exposures to loss. The majority of the companies responding to this question indicated that they do not write habitational risks for reasons not related to lead-poisoning risks. The other 70 responding companies write liability insurance for one or more of the habitational dwelling types (apartments, condominiums, multi-family and single family dwellings). The 70 companies that reported writing habitational dwellings provide liability coverage for an estimated 268,103 apartments; 66,508 condominiums; 12,582 multi-family dwellings; and 77,149 single-family dwellings. Nineteen of the companies reported writing only those habitational risks constructed after a certain date (primarily after 1978).

Fifteen companies writing apartments indicated that they include coverage for lead poisoning automatically, while 46 companies exclude the coverage. Only one company writing condominiums includes the coverage automatically, while 43 companies exclude the coverage. Two companies writing multi-family dwellings include the coverage automatically, while 44 companies exclude the coverage. Three companies writing single-family dwellings include the coverage automatically, while 42 companies exclude the coverage. None of the responding companies that exclude

⁵ For the purposes of this report, liability means liability other than auto liability.

coverage for lead poisoning indicated that they offer a “buy-back” (the option to purchase the coverage for an increased premium).

Companies excluding coverage for lead poisoning were asked what method of exclusion was used: a standard absolute pollution exclusion or a specific lead poisoning exclusion (see Appendix 3 for examples of the two types of exclusions). Of the companies using the standard absolute pollution exclusion, ten of the companies write apartments, nine companies write condominiums, eight companies write multi-family dwellings, and seven companies write single-family dwellings. Of the companies reporting using a specific lead poisoning exclusion, fifty of the companies write apartments, 49 companies write condominiums, 48 companies write multi-family dwellings, and 46 companies write single-family dwellings.

The companies that indicated that they do not write coverage for lead-based poisoning or that indicated that they exclude the coverage were asked whether they would consider writing coverage for lead-based poisoning injuries if uniform lead-based paint mitigation standards were adopted. Sixteen of the responding companies indicated they would consider writing the coverage with these standards while 29 indicated that they would not consider writing the coverage. Additionally, a number of companies indicated that they were unable to answer the question without specific details of the mitigation standards.

Companies were also asked if they would consider writing this coverage if there were legal liability limits adopted for all property owners or if there were legal liability limits adopted for those property owners whose properties met the mitigation standards. Twenty-two companies indicated that they would consider writing the coverage if there were legal liability limits set for all property owners, while 27 companies indicated that they would consider writing the coverage for owners whose properties met the mitigation standards. Twenty-one companies indicated that they would not provide the coverage if there were liability limits for all owners, and 18 indicated that they would not provide the coverage if there were liability limits adopted only for those owners whose properties met the mitigation standards.

Companies were asked if they would consider writing this coverage if a no-fault injury fund were established. Fourteen companies indicated that they would consider writing the coverage while 29 companies said that they would not consider writing the coverage under these circumstances.

It is important to note that a number of the companies qualified their answers to the above questions based on having only a hypothetical situation presented for

their consideration; specifics of any proposals would have to be seen in order for the companies to provide a more detailed answer.

Finally, companies were asked if they would underwrite the coverage or withdraw from the market in Virginia if a statutorily mandated offer of lead-based poisoning coverage were required. Fifty-one companies indicated that they would underwrite the coverage, while 13 companies indicated that they would withdraw. Again, many of the companies qualified their response, indicating that any statutory change would have to be weighed against the specifics of the requirements before a decision to underwrite or withdraw were made.

Property Manager Surveys

The Bureau received 135 responses to its request for information. Two surveys were returned undelivered, and 3 responses were delivered back to the Bureau in an unreadable condition, resulting in a total response rate for the survey of 32%.

Of the respondents, 54 indicated that they owned property, 113 indicated that they managed property, and 11 indicated that they neither owned nor managed property. Respondents reported owning or managing 86,408 units.

Of the respondents who owned or managed property, 110 indicated that they owned or managed properties constructed prior to 1978, while 80 indicated that they owned or managed properties constructed prior to 1950.

Ninety-eight of the respondents indicated that they carry general liability insurance. Twenty-five respondents indicated that they do not carry liability insurance. Of the respondents who carry insurance, 16 indicated that their policy provides coverage for lead poisoning and 65 indicated their policy excludes coverage for lead poisoning. Four respondents whose policies cover lead poisoning indicated that the average cost was \$87, if a separate charge were made. There appeared to be no correlation between the number of units owned or managed and whether or not the respondent's liability insurance policy covered lead poisoning.

Of the respondents whose policies exclude coverage for lead poisoning, only six indicated that they had tried to buy back the coverage. Two respondents were offered the coverage by their insurance companies, one at \$50 per unit and one at \$1000 per unit. Neither respondent elected to purchase the coverage, with one citing the high cost and high deductible as the reason for not purchasing the coverage.

Only fourteen respondents reported performing any lead mitigation on the units owned or managed. Only two respondents reported having a lead poisoning claim made against them or their company. There appeared to be no correlation between the number of units owned or managed and whether or not lead mitigation activities had been performed. Of the two respondents reporting having had claims made against them, both were managers or owners of a large number of units.

Realtors' Comments

Comments from members of the Virginia Association of Realtors were solicited through the organization's weekly newsletter. Comments were received from two members. One realtor indicated that he checked with his insurance agent regarding the availability of insurance coverage for lead poisoning risk and was advised that policies in Virginia have a standard exclusion on all policies. The other realtor, a full service realtor in business for more than 75 years, indicated that, while his agency has full liability insurance coverage, that coverage is becoming more difficult to obtain. Additionally, the realtor indicated that he believed that the coverage is much more costly in older urban cities, such as Petersburg. This realtor indicated that in his personal experience, a tenant alleging lead poisoning named his agency as a third party in a suit brought against the owner of a property. When it became known that the owner of the property did not have adequate liability insurance and when the owner's insurance company tendered the limits of his policy, the realtor was named in the suit. The realtor expressed his frustration with this situation, particularly after complying fully with all existing laws, acting in a professional manner, and having adequate insurance.

Other States' Laws

Several states have enacted laws addressing lead in habitational dwellings held for rental. Maine, Maryland, Massachusetts, and Vermont have implemented different programs to address childhood lead poisoning. The following summarizes the provisions of each of these states' programs.

Maine

Maine first enacted legislation in 1973 addressing lead as an environmental health hazard. The Lead Poisoning Control Act⁶ requires owners to take certain corrective measures, including interim controls, to satisfactorily correct or remove the environmental lead hazards. For those owners who meet the requirements of the

⁶ 1973 Public Laws of Maine Chapter 367

Act, limitations on awards in actions for damages against the owner of a property may not exceed \$600,000, with some exceptions.

A task force was commissioned by the Maine Legislature pursuant to 1995 Public Law Chapter 572, "An Act to Limit the Liability of Property Owners in Cases of Nonnegligent Lead Poisoning," to study the availability of insurance providing coverage for lead poisoning in the State of Maine. In this task force's report dated December 1998, the effect the liability cap has had on the availability of insurance was examined. The task force found that the current statutory cap of \$600,000 on environmental claims against many residential multifamily property owners was not an overall significant or determinative factor in insurer decisions relating to the availability of basic insurance on property.⁷ Additionally, the task force found that the cap places an artificial limit on the ability of lead-poisoned children to recover for their injuries, and the cap does not encourage property owners to abate underlying lead hazard exposures. In fact, the task force suggested that the cap would be more useful if it were tied to positive action by property owners to identify and address lead exposures in their properties.⁸

With regards to insurance availability, the task force recommended that the Maine Bureau of Insurance continue disapproving insurance policy form filings which exclude coverage for lead poisoning claims except when the insured has received written notice of the presence of lead and has failed or refused to take corrective measures.⁹

Maryland

Maryland enacted House Bill 760, "The Lead Poisoning Prevention Program," in May of 1994. Effective October 1, 1994, the law addresses the issues of prevention and insurability of lead poisoning. In essence, the new law "cuts off" the rights of children and their representatives to traditional tort damages for lead poisoning. This "cut-off" of rights is predicated on the requirement that the owner has satisfied certain requirements, including testing or clean-up of the property and making a "qualified offer" to an effected child and his or her legal representative *if* the child's blood lead level exceeds a specified statutory threshold. A "qualified offer" is a settlement of a child's potential lead poisoning claim. Statutorily defined, this "offer" is an offer to relocate the child's household to "lead safe" housing and to pay for any medical treatment necessary to mitigate the effects of lead poisoning if there

⁷ "Report of the Task Force on Lead Poisoning Liability and Insurance, December 1998, p.13.

⁸ *Ibid.*, p. 13.

⁹ *Ibid.*, p. 15.

is no coverage for treatment available under a public medical assistance or health insurance plan.¹⁰

Under House Bill 760, insurance is designed to function as an incentive for owners to reduce lead hazards in effected properties and to provide a mechanism to proactively aid lead-poisoned children. The statute provides that a lead hazard exclusion in an insurance policy covering affected property must be waived to the extent of the benefits payable under a qualified offer (set at a maximum of \$17,000) only if the affected property is in compliance with the registration, notification, and clean-up provisions of the act. Thus, the statute only results in a waiver of lead exclusions if the affected property has satisfied the risk reduction standards in the act.

It is important to note that the insurance component of House Bill 760 is purely voluntary on the part of owners and insurers; the owner is not required to carry the coverage nor is the insurer required to provide the coverage.

Massachusetts

Massachusetts enacted one of the nation's first state-sponsored lead poisoning prevention laws in 1971. This law required Massachusetts property owners who housed children under the age of six to permanently control lead-based paint hazards and established a tort system of strict liability for owners who failed to make a child's property lead-safe. Owners were held liable even if they were unaware of the existence of lead-based paint hazards.¹¹ While this program proactively addressed childhood lead poisoning victim identification, it did little to promote mitigation or abatement of the underlying environmental hazard.

A 1987 report issued by a Special Legislative Commission on Lead Poisoning Prevention entitled The Continuing Toll recommended legislative changes to improve the number and quality of abatement activities. These changes were adopted in 1987 as "An Act Further Preventing Lead Poisoning." The highlights of the statute included improving the quality of abatement work, providing unit owners financial incentives to abate lead through a state income tax credit and grant/loan program, and embracing the principle of universal blood screening for children (with insurers covering the costs of the screenings).

¹⁰Jackson L. Anderson Jr., and Lisa A. Kershner, JD, "How New State Legislation Addresses the Insurability of Lead-Based Paint Hazards in Private Rental Housing," CPCU Journal, March 1995, p. 50-57.

¹¹ "Understanding the Massachusetts Lead Law," A Guide Prepared by the Conservation Law Foundation, June 1994, p. 2.

In 1993, “An Act Further Regulating Lead Paint in the Commonwealth” was passed. This act, effective in 1994, was designed to respond to increased concerns about the costs, complexities and liability implications of the lead law without compromising children’s health or abandoning the regulatory mandate that lead-based paint hazards be permanently abated in the homes of young children.¹² The act lowered the cost of compliance by owners, increased the amount of financial assistance available, and addressed owners’ concerns about liability and insurance.

Under current Massachusetts law, owners (i) are allowed to use interim controls for up to two years before permanently encapsulating or abating lead paint hazards; (ii) are provided with a \$1500 per unit state tax credit; (iii) have access to a new loan program; and (iv) are no longer held strictly liable for damages, short of gross or willful negligence claims, if certification is obtained from a licensed inspector that the owner has complied with the abatement provisions of the act. Insurers are required to provide coverage for complying owners’ negligence claims, if not willful or grossly negligent. Insurers are still allowed to exclude coverage for lead claims when owners subject to the lead law have not brought a unit into compliance.

Vermont

In 1996, Vermont passed Act 165 to help prevent childhood lead poisoning in rental housing and childcare facilities. Under this act, rental housing constructed prior to 1978 is assumed to contain lead-based paint, and owners must comply with a number of provisions unless the property is certified lead-free. An owner must comply with provisions which include providing written educational information to current and prospective tenants; posting notices in buildings detailing how to report deteriorating paint to the owner or property manager; performing Essential Maintenance Practices (EMPs); completing a Department of Health training course; and filing a signed affidavit with the owner’s insurance carrier and the Vermont Department of Health indicating that EMPs have been performed.

The law establishes the duties of reasonable care for the property owner, as well as a conclusive presumption of habitability with respect to lead-based paint hazards if the duties of reasonable care are met (however, if a child under the age of six occupying the dwelling is lead poisoned, the conclusive presumption of habitability may be rebutted).

The commissioner of insurance is empowered to determine whether liability insurance is available for owners of rental property. The commissioner of insurance is also given the authority to order liability insurers to provide or continue to provide

¹² *Ibid.*, p. 3.

liability insurance coverage to property owners in compliance with the provisions of the law (or participate in any other appropriate remedial program as determined by the commissioner).

Conclusion

Based on the information received from insurance companies actively writing habitational dwellings in Virginia, the majority of companies currently writing habitational risks held for rental exclude coverage for claims arising from lead-based poisoning. This could have the appearance of indicating that there is an availability problem for coverage for lead-based poisoning for the owners of the properties. Coverage is excluded from most policies issued to property owners with units constructed prior to 1978. Property owners are not able to "buy-back" the coverage, thus exposing them to increased liabilities.

Based on the information received from property owners and managers, most do not have insurance for lead-based poisoning in their insurance. Very few owners/managers have attempted to obtain the coverage. The vast majority of respondents to the survey have properties that were constructed prior to 1978. Additionally, relatively few of the respondents have performed any lead mitigation work to the units they own or manage; however, only two of the respondents indicated that they or their companies had been sued for lead poisoning. The fact that only two of the respondents have had a claim made against them may account for the small number of respondents who have tried to purchase coverage for lead poisoning.

Recommendations

Based on the answers given by insurance companies actively writing habitational dwelling insurance in Virginia, the Bureau believes that coverage for lead-based poisoning risks may become more available if standards covering lead-based poisoning hazards and mitigation requirements are promulgated including independent verification procedures. The Joint Subcommittee Studying Lead Poisoning Prevention may wish to make such recommendations in its report to the General Assembly. Additionally, if standards are adopted, this issue should be revisited several years after the adoption of such standards to determine if insurance coverage has become more available. At that time, the Joint Subcommittee, or any successor thereof, may wish to conduct an analysis of the legal climate in Virginia to determine if any additional recommendations are necessary such as setting caps on liability for owners and real estate professionals.

Appendix 1

Please put checks where applicable and circle YES/NO where applicable

- 1] Do you or does your company own____ and/or manage____ habitational dwellings held for rental? YES NO
(apartments, condominiums, multi-family dwellings, single-family dwellings]
- 2) If YES, were any of the units constructed prior to 1978? YES NO Prior to 1950? YES NO
- 3) Do you or does your company currently carry commercial general liability insurance? YES NO
(If no, go to Q. #6)

If YES, does your liability insurance policy include _____ or exclude _____ coverage for lead poisoning?
- 4] If your policy includes coverage for lead poisoning, how much does the coverage for lead poisoning cost, if it is a separate charge: \$_____
- 5) If your policy excludes coverage for lead poisoning, have you attempted to buy back the coverage? YES NO
If YES, did the insurance company agree to offer the buy-back? YES NO
At what cost? \$_____
- Did you buy the coverage? YES NO
- 6) How many units do you or does your company own/manage? _____
- 7) Have you or has your company performed lead mitigation from any of the units you own or manage? YES NO
8. Has a lead poisoning claim ever been made against you or your company? YES NO

Thank you for taking the time to complete this very important survey. Your anonymous answers will be held completely confidential; only a summary of all of the responses will be released.

Appendix 2

A1) Does your company write commercial general liability insurance for habitational risks held for rental (Apartments, Condominiums, Multi-Family Dwellings, Single-Family Dwellings)?

Don't write habitational risks: _____ (go to B1) or:

Write commercial general liability insurance for habitational risks of the following types:

	Do you Write? (Circle Y or N)	Approximate Number of Units Insured in Virginia	Age Restriction on the Property, if any?
Apartments	Y N		
Condominiums	Y N		
Multi-Family Dwellings	Y N		
Single-Family Dwellings	Y N		

A2) For each of the habitational risks shown above, do you include or exclude coverage for lead-based poisoning?

	Include Coverage for Lead Automatically	Include Coverage for Lead using Buyback	Approximate Cost of Buyback per Unit	Exclude Coverage for Lead Poisoning
Apartments	Y N	Y N	\$	Y N
Condominiums	Y N	Y N	\$	Y N
Multi-Family Dwellings	Y N	Y N	\$	Y N
Single-Family Dwellings	Y N	Y N	\$	Y N

A3) For each of the habitational risks above where you indicated your company excludes coverage for lead (column 5), what contractual exclusion does your company use?

	Excluded using a Standard Absolute Pollution Exclusion	Excluded using a Specific Lead Poisoning Exclusion
Apartments	Y N	Y N
Condominiums	Y N	Y N
Multi-Family Dwellings	Y N	Y N
Single-Family Dwellings	Y N	Y N

A4) Other underwriting criteria for habitational risks?

B1) If you indicated in Question A1 that your company does not write commercial general liability coverage for habitational risks held for rental, why not?

B2) If your company doesn't write habitational risks due to lead-based paint exposure, or if your company excludes coverage for lead injuries from those policies you do write, would your company consider writing coverage for lead paint under the following conditions:

Formal uniform lead-based paint mitigation standards adopted:	Y	N
Limits on legal liability adopted for all property owners:	Y	N
Limits on legal liability adopted for property owners whose properties meet the uniform lead-based paint mitigation standards:	Y	N
No-fault injury fund established:	Y	N

B3) If a statutorily mandated offer of coverage were required in Virginia, would your company elect to underwrite the exposure or withdraw from the market?

Underwrite _____ Withdraw _____

Comments: _____

Name: _____

Title: _____

Company: ABC Insurance Company

Phone: _____

Please return to: Eric Lowe, Senior Analyst, Va. Bureau of Insurance
 P. O. Box 1157, Richmond, VA 23218
 Fax: (804) 371-9396 Phone: (804) 371-9628

Appendix 3

This is an example of standard absolute pollution exclusion wording taken from a typical liability insurance policy approved by the Bureau of Insurance.

This Insurance does not apply to:

1. Pollution

(1) "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured;

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

(i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor, or

(ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes

uncontrollable or breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

This is an example of an absolute lead exclusion approved by the Bureau of Insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABSOLUTE LEAD EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to any damages, judgments, settlements, loss, costs or expenses that:

- a. May be awarded or incurred by reason of any claim or "suit" alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred in whole or in part but for the lead hazard; or
- b. Arise out of any request, demand or order to:
 - 1. Identify, abate, test for, sample, monitor, clean up, remove, cover, contain, treat, detoxify, decontaminate, neutralize or mitigate, or in any way respond to or assess the effects of the lead hazard; or
 - 2. As a result of such effects, repair, replace or improve any property.

c. Arise out of any claim or any "suit" for damages because of:

- 1. Identification of abatement of testing for, sampling, monitoring, cleaningup, detoxifying, decontaminating, neutralizing or mitigating, or in any way responding to, or assessing the effects of the lead hazard; or
- 2. As a result of such effects, repairing, replacing or improving any property

As used in this exclusion, lead hazard means an exposure or threat of exposure to the actual or alleged properties of lead and includes the mere presence or suspected presence of lead in any form or combination.

