

March 2010



Eastern Michigan Real Estate Investment Association

# E.M.R.E.I.A. ADVISOR



## Next Monthly Meeting

To Be Determined



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### How to Protect Your Property From Yourself

By Matthew M. Wallace, CPA, JD

If you are like most people, you are concerned about what happens to your properties after you become "old and funny." You have worked hard your entire life to accumulate what you have and you want to make sure everything is there when you need it.

As you age, there is a gradual decline in your physiological systems. You become more vulnerable to environmental and other conditions. You may start making financial decisions that you would have considered unwise or foolish when you were younger. If you are no longer able to take care of your properties, how would they be maintained, rent collected, bills be paid, units get rented, property get sold or tenants evicted?

If you have done no estate planning and have no documents in place, the only choice your family has is to ask the probate court to appoint a conservator. Your conservator would take control of your properties and other assets and make financial decisions for you. However, the court can only appoint a conservator if the court by clear and convincing evidence, determines not only that as a result of some physical or mental deficiency, you are unable to effectively manage your property or business affairs, but also that either your assets would be wasted without proper management or they are needed for your support.

Unfortunately, the court may be not be able to appoint a conservator if you are only making poor choices. The court can't fix stupid. If you are only making unwise or foolish decisions, the court cannot substitute its or your family's judgment for yours.

If you have a power of attorney in place, your appointed financial agent can handle your financial affairs in these circumstances. However, your financial agent appointed in your power of attorney has no authority to stop you from making inappropriate decisions. Even with a power of attorney, your family may still be required to petition the probate court for a conservatorship. Your conservator would have the legal authority to remove you as a signer on your accounts in order to protect and preserve your assets for you.

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A conservatorship proceeding can be traumatic for your family, especially if at the time, you feel you do not need a conservatorship. Most of the time, if you are able, you must attend the hearing along with your children who have requested the conservatorship. Your children then have to explain to the judge in front of you, all of the problems you have had, all of the poor decisions you have made and the result of those poor decisions. This can create ill will between you and your family.

One of the best ways to protect yourself and your property from yourself when you become old and funny is to have a fully funded living trust. A fully funded living trust is a revocable living trust into which all of your assets have been transferred or re-titled. You include mental disability provisions in the trust by naming a disability panel, usually made up of family and/or family friends. Without any court involvement, your disability panel can make the determination that you are unable to appropriately manage your financial affairs. At that point, all that has to happen is that your disability panel members sign disability certificates and your successor trustees sign acceptances of trust. Your successor trustees then can take over for you. Your property is protected from your inappropriate decisions. With this type of plan, you control when you give up control.

With a properly drafted and signed estate plan, you can protect your properties in the event you are no longer able to take care of them.

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## New EPA Rule on Renovation, Repair & Painting - Will YOU Be Ready by April 2010?

By HomeSafe Training

A new Federal regulation called the Renovation Repair and Painting Rule (RRP) will go into effect in April 2010. It requires all kinds of contractors who work in pre-1978 housing and who might disturb painted surfaces to become Lead Certified Renovators by taking a one-day course about using "Lead Safe Work Practices" on the job. Since then, Senator Obama was one of those behind the original legislation, EPA enforcement is expected to be well funded. A summary of the RRP Rule follows.

### Why is the RRP Rule Important?

When lead paint is sanded, scraped or disturbed, microscopic particles of the metal mingle with the dust that is created. That lead-containing dust is what can hurt people, especially children and pregnant women. Lead is extremely toxic and causes a long list of problems, including learning and behavioral problems, kidney disease, high blood pressure, miscarriage and birth defects. Lead can even cause depression and aggressive behavior. The problems caused by lead, even very tiny amounts of it, would fill an encyclopedia. Lead doubles the number of children in special education classes and is thought to play a major role in our crime rate. There is no safe level of lead in the body. Any at all is bad for you.

There has been a lot of publicity about toys and other consumer products manufactured in China and containing lead. But, the problems cause by all of those products together is a drop in the bucket compared

to the number of people harmed when contractors disturb old paint in pre-1978 buildings without taking some simple precautions. Since there is no cure for lead poisoning, prevention is key. That's why EPA and the state of California require contractors to protect the people they work for.

**NOTE:** *The California regulation is already in effect. The Federal Renovation, Repair and Painting Rule (RRP) will start be enforced as of April 1, 2010.*

### To Whom Does the RRP Rule Apply?

The rule applies to jobs in pre-1978 housing, child occupied facilities and where more than 6 square feet per room or 20 square feet outside will be disturbed by someone who is being compensated for their work. The FM rule covers seemingly millions of jobs: renovation, remodeling, painting, window replacement, plumbing, electrical work, heat and air-conditioning, demolition, plus jobs performed by many other trades like carpenters, electricians and handy-men. The rule applies to people who work for rental property owners, schools and day care providers. It also applies to non-profit organizations and governmental agencies.

### Where Does the RRP Rule Apply?

#### *Target Housing*

Target Housing is a house or apartment (including mobile homes) built before January 1978, except for:

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1. 0-bedroom units (such as dorm rooms or studio apartments);
2. Housing that is officially designated for the elderly or the handicapped;
3. Housing that has been tested by a State Certified Lead Inspector and has been found to be free of lead-based paint.

#### *Child-Occupied Facilities*

This is a building, or portion of a building, constructed prior to 1978, visited by the same child, six (6) years of age or under, on at least two different days within any week, provided that each day's visit lasts at least three hours, the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Such facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

#### **What Does the RRP Rule Require?**

1. **Pamphlet Distribution** - Contracts must give clients a pamphlet called "Renovate Right" and get a signed receipt before beginning a job. *(FYI, this part of the regulation is in effect NOW!)* Contractors can call (800) 424-5323 and request free copies of "Renovate Right" and the "Small Entity Compliance Guide to Renovate Right" or both pamphlets can be downloaded from the EPA website at [www.epa.gov](http://www.epa.gov).
2. **Individual Certification** - At least one RRP Certified Renovator is required at each job site. Certification involves taking a 1-day class from an EPA Accredited

Training Provider. *Note: Lead Abatement Supervisors and Workers who are already state certified also have to become RRP certified, but they only need to take a 1/2 day "refresher" class.*

3. **Firm Certification** - In addition to individual certification, each firm, agency or non-profit must also become RRP certified. To do so, firms or entities must submit an application and pay EPA a fee (\$300) which is good for five years. The EPA Firm form can be downloaded at <http://www.epa.gov/lead/pubs/firmapp/pdf>. Firms may apply to EPA to become certified after October 22, 2009.

After April 22, 2010, "...no firm working in target housing or child-occupied facilities, where lead-based paint will be affected by the work, may perform, offer or claim to perform renovations without EPA Firm Certification." Firm certification is not the same as the personal certifications attained by successful completion of an RRP course. *Note: Lead Abatement firms also have to become RRP Certified if they ever do non-abatement jobs.*

4. **On-the-Job Training** - RRP Certified Renovators must train all non-certified people at the job site. *NOTE: Contractors who wish to do business with cities/counties receiving Federal money for housing rehabilitation must have everyone trained in the classroom.*

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5. **Paint Testing** - The rule requires contractors to either test all the paint they will disturb BEFORE beginning a job, or assume that is lead based. The testing is done by the contractor, using EPA approved test kits. *NOTE: In California, contractors will not have to test the paint. Instead they must assume that all surfaces in all structures built before 1978 contain lead-based paint. The only people in California allowed to test paint for are State Certified Lead Inspector/Risk Assessors and Sampling Technicians.*

6. **Use Lead Safe Work Practices** - The RRP Rule requires that "Lead Safe Work Practices" be used in Target Housing and Child-Occupied Facilities when disturbing 6 square feet per room or 20 square feet outdoors. *NOTE: California already requires that "Lead Safe Work Practices" be used in all structures (not just Target housing and Child-Occupied Facilities) when disturbing amount of lead-based paint or pre-78 paint. "Lead Safe Work Practices" aren't difficult or costly. Buying a good HEPA vacuum is probably the biggest expense for a contractor. **No shop vacs.** HEPA vacuums are the only type of vacuum allowed in pre-1978 buildings.*

7. **Cleaning Verification** - At the end of each job, contractors are required to do a "cleaning verification" to make sure they cleaned up properly. They wipe a cleaned area with a white

cloth and then compare the cloth against a picture on a laminated card given to them during training. If the cloth is lighter than the picture on the card, the area is considered to be clean. *NOTE: This is the most controversial part of the regulation. Many people feel this is like having the fox guard the chicken coop. How many contractors will fail themselves, one wonders? Another consideration is the test itself. Standard procedure after most lead jobs is to hire an independent third party State-Certified Lead Inspector who samples the dust in several locations and sends the samples to a laboratory for evaluation.*

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*After April 22, 2010, "... no firm working in target housing or child-occupied facilities, where lead-based paint will be affected by the work, may perform, offer or claim to perform renovations without EPA Firm Certification."*

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#### **What do contractors need to do?**

1. Sign up for an EPA Accredited RRP class. *NOTE: Lead Abatement Workers and Supervisors who are already State certified should sign up for the 1/2-day RRP refresher class.*
2. Call 800-424-5323 and ask for a free copy of "Renovate Right" and "Small Entity Compliance Guide to Renovate Right," or download them from the EPA.

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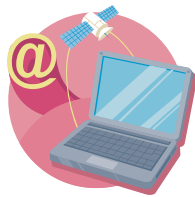
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## Links

- Michigan Housing Locator
- St. Clair County Parcel Search
- Eastern District of Michigan Bankruptcy Court
- Detroit Federal Court
- Sex Offender Registry
- Michigan State Corrections
- Federal Offenders List
- St. Clair County District & Circuit Court Case Records

## Forms

- Rental Application
- Commercial / Residential Leases
- Pet Agreement
- ... and more!



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- **Our Monthly Newsletter is now available online!** Also, if we have an email address for you on file, your newsletter will automatically be sent to your email. Please contact our office if you have a new address or wish to receive your issue via postal mail.
- **VACANCY LISTINGS** - *The office often receives calls from renters looking for rental units.* These prospective renters are directed to our website. Be sure to utilize the property list feature or the Michigan Housing Locator link to advertise your available units **FOR FREE!!**
- **CREDIT REPORTS** - If you are interested in conducting your own credit reports, contact our office to receive a step by step guide for setting up your own account. Or, the office can conduct the report for you at the cost of \$20 per report.

Now is the time, in a recessionary economic cycle, when owners of investment properties begin to get calls from tenants about rent reductions, forbearance, assistance, desire to cancel their lease and a number of other requests for what amounts to financial assistance from their landlords. In these times it is hard for a landlord to know which way to turn given their own financial situation, the size of their mortgage and other variables.

In approaching a request from a tenant for some kind of relief, it is vitally important that the landlord see the whole picture. That means that the landlord should expect adequate information to help make a decision that can lead to the success of the tenant and a going forward way of thinking about the business. With most tenants that means good financial information, from sales reports to operating statements, to a new business plan, to new financial statements and credit reports. With many tenants, however, realistically, such information just isn't available. Many small tenants aren't keeping records of their businesses in a manner that they understand them, let alone so a landlord can understand them.

We suggest to our owners that their attitude has to be about problem solving. They should try to avoid three things, coincidentally the same three big solutions the tenants are looking for. Those three things are:

### Permanent Changes

If the change that is needed to solve the problem must be long term than the business

you are dealing with may not be viable. The tenant may just be putting a problem they instinctively know is theirs onto you.

### Short Term Fixes That Saves the Tenant Money But Don't Really Solve Any Problems

Don't agree to a change that does not resolve existing delinquency problems or at least makes it possible to see those changes make a difference with the delinquency.

### Cancellation of the Lease

If there is to be a lease cancellation, it needs to be part of a business decision by the owner based on all the facts. Those facts include the actual loss expected: if there is a current delinquency, what are the prospects of releasing the space, what are the costs of releasing the space, etc? And remember that guarantors have a voice in whatever happens.

Likewise, there are *three musts* in approaching concessions:

1. ***Only make concessions that are likely to help.*** If a tenant's business is falling apart because the particular widget they make or sell has no place in the market, a rent concession isn't what they need. Insist on a business plan that demonstrates that the business is viable. If you feel a concession is in order, tie it to performance. If you agree to take less rent for a period of time, don't waive it but rather defer it to some future date based on performance.

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Say, for instance, a tenant gets \$1,000 per month for four months as a rent reduction. What do you need to achieve before you can waive that rent? You need to see that there is progress, not a further falling behind. Agree to waive the rent after the four months provided the tenant has remained current on the remaining rent obligations during the whole four month period.

2. ***Again, make reasonable decisions based on the facts.*** After the facts have been reviewed and it is clear the tenant cannot survive, then maybe a concession just extends the pain for everyone. Don't tear up the lease (the tenant's preferred solution) at that point, but rather seek a financial solution that lets the tenant out, such as a buyout, or even better, an assignment to another user that is more viable. Never allow the tenant's bad luck to become your problem. If you can help them, that is acceptable but bailing them out is a different story.

3. ***Document, document, document.*** You don't want to get into a dispute with your tenant about what is expected, or more likely what was expected. You want a guarantor to claim non-responsibility because he or she was not included in the change in the lease. Depend on your property manager to properly document anything you have agreed to. Verbal agreements invariably lead to further pain.

When an owner is approached by a tenant for a concession, the owner has to think first about what will make a difference, what will not make a difference and the prospect of actually solving a problem with a concession. Anything short of that is not going to be in the best interest of the owner.

*Tom Sjostrom began his real estate career in 1975 in commercial lending. Tom's career has provided him with vast experience in lending, appraising, leasing, problem asset management, commercial property management, acquisition due diligence and asset disposition. Tom was the Chief Operating Officer for a major family owned northwest real estate company and then owned his own company until it merged with Bluestone and Hockley in 2005.*

*From The Voice, December 2009*



## Work-Out May Be the Answer to Real Estate Investor in Financial Trouble

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The Michigan economy is without question in the tank, especially the real estate market. Many real estate investors who were prospering a year ago now find themselves under water or in extreme difficulty because of falling market values and negative cash flow. This is especially true for those who leveraged their investments with debt. That strategy which worked for many years now has backfired because some investors find that the current cost of debt service is in excess of income. This is bleeding some investors into insolvency.

Is the gut wrenching harshness of bankruptcy the answer? Probably not if a real estate investor engages in a "work-out" plan that is acceptable to his or her financial creditors. If the plan works, it avoids lawsuits and bankruptcy.

The process can be very complicated and involves many disciplines including law, finance, accounting and integrated analysis. With the proper professional assistance it can be done, and a good work-out plan can end an investor's living nightmare.

*From The Voice, February 2010*

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### EPA - continued from pg 6

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3. Purchase an HEPA vacuum (if you don't already own one). They are available from many specialty suppliers with competitive pricing.
4. Provide a copy of your EPA or state lead training certificate to your clients.
5. Tell clients what lead-safe methods you will use to perform the job.
6. Ask your clients to share the results of any previously conducted lead tests.
7. Keep records to demonstrate that you and your workers have been trained in lead-safe work practices and that you followed these practices on the job.
8. Read about how to comply with EPA's rule in the EPA Small Entity Compliance Guide to Renovate Right. (See #2)

For more information about this law and the requirements, please visit the U.S. Environmental Protection Agency at:  
[www.epa.gov/lead/pubs/renovation.htm](http://www.epa.gov/lead/pubs/renovation.htm).

*From The Voice, February 2010*

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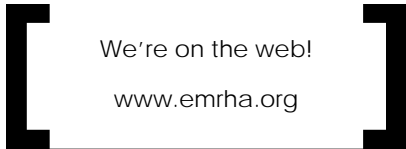
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