

# Appendix 9:

## Lead-Based Paint Liability Insurance

### I. PURPOSE OF APPENDIX

This appendix provides guidance to property owners on the purchase of liability insurance against claims as a result of:

1. A negligent act, error or omission in professional services related to lead-based paint evaluation work (lead-based paint inspection, lead-based paint risk assessment, lead-based paint testing, and clearance examinations after lead hazard control work) in the owner's housing management program (Professional Liability Coverage), and/or
2. Bodily injury or property damage resulting from the discharge, dispersal, release, or escape of lead-based paint during renovation, remodeling, maintenance, and lead hazard control work by owners as part of their housing management program (Contractor's Pollution Legal Liability Coverage).

The term "lead hazard control" includes both interim controls and abatement.

### II. LEAD-BASED PAINT-RELATED WORK AND OVERVIEW OF PUBLIC HOUSING INSURANCE REQUIREMENTS

For several years, lead liability insurance has been readily available for lead-based paint inspection, risk assessment and abatement work. (Firms and individuals conducting lead-based paint inspection and risk assessment work are called consultants in this Appendix. Firms and individuals conducting abatement, interim controls and renovation work are called construction contractors or contractors in this Appendix.) Depending on the type and/or level of HUD assistance, two general categories of lead-based paint work may be performed: 1) Evaluation Work, and 2) Lead Hazard Control Work. These two categories require different insurance coverage.

The broad insurance requirements for these categories of lead-based paint work are described below. Greater detail is provided in Sections III and V of this appendix.

#### A. Professional Liability Coverage (Errors and Omissions, or "E&O") for Lead-Based Paint Evaluation Work:

**Evaluation Work\*** includes:

- Clearance examinations after lead hazard control work
- Lead-Based Paint Inspection
- Lead-Based Paint Risk Assessment, including Reevaluation
- Lead-Based Paint Testing by certified renovators in unassisted housing

\*Note: Proper training is required for all work listed. State or U.S. Environmental Protection Agency (EPA) certification is required for lead-based paint inspections and risk assessments, and clearance examinations after abatement work or after renovation, repair or painting work, or after lead hazard control work, or when certified renovators perform paint testing in unassisted housing, when required by regulatory, grant or contract requirements of the state, tribal or local government or of HUD or another federal agency, including certification of the individuals and the firm (or owner) by whom the certified individuals are employed. See the EPA lead web site at <http://epa.gov/lead/pubs/traincert.htm>.

- B. **Contractor Pollution Liability (“CPL”) Coverage for Lead Hazard Control Work:** HUD also recommends coverage for lead-based paint-related claims for bodily injury or property damage arising from the performance of lead-based paint-related construction or maintenance work. If the owner’s employees perform the work, the work may be covered under the owner’s General (or Umbrella) Liability policy provided that the policy will address such pollution claims, or, the owner may take out a CPL policy (perhaps, if the owner’s broker advises, as an owner-controlled policy or “OCIP”) with the owner as the Named Insured on the CPL policy. If a contractor performs the work, HUD recommends that the contractor list the owner as an Additional Insured on the contractor’s CPL policy.

**Lead Hazard Control Work\* includes:**

Lead-Based Paint Abatement performed by certified abatement contractors working for a certified abatement firm, or by certified abatement supervisor and abatement worker employees working for the owner if the owner is itself a certified abatement firm.

Interim Controls, including Ongoing Lead-Based Paint Maintenance, and Renovation, Repair, and Painting work, performed by the owner’s employees or contractors trained in lead-safe work practices; the project supervisor must be a certified renovator if the work is covered by the EPA’s Renovation, Repair, and Painting (RRP) Rule. If the work is covered by the RRP Rule, the owner (if the work is being done by the owner’s employees) or the contractor (if not) must be a certified renovation firm.

\*Note: Proper training is required for all work listed. State or EPA Certification is required for abatement work (see the EPA lead regulations web site, [www.epa.gov/opptintr/lead/pubs/regulation.htm](http://www.epa.gov/opptintr/lead/pubs/regulation.htm)) and RRP work (see the EPA RRP Rule web site, [www.epa.gov/lead/pubs/renovation.htm](http://www.epa.gov/lead/pubs/renovation.htm) for the scope and requirements of that Rule). Some states require certification for some RRP or interim control work; owners should check their state requirements; see the RRP web site, above, for information on whether the state or tribal area in which the work is to be done is operating the certification program instead of EPA. HUD requires that persons performing interim controls in HUD-assisted housing be certified renovators who have been certified by either the EPA or the EPA-authorized state or tribe in which the work is to be done, as applicable, or be certified lead abatement workers. The EPA’s RRP Rule generally applies to interim control work in target housing (generally, pre-1978 housing), but EPA does not allow certified abatement supervisors/workers to do RRP work unless they are also RRP certified. For unassisted housing, the RRP training requirements apply. Owners having RRP work done should check their own insurance policies, or (if applicable) their contractor’s insurance policies to determine if they cover lead hazard control work, and, if they do, what exclusions, deductibles and/or limitations apply. For more regulatory information, see Appendix 6.

In summary, for lead-based paint evaluations or other lead-based paint-related professional services, E&O coverage, which does not exclude lead-based paint activities, is required. For lead hazard control work, CPL coverage is required. Either the “occurrence” or “claims made” form of coverage is acceptable for CPL coverage (see section on Lead Liability Coverage Issues, below). True occurrence coverage is preferable because claims by children could occur years later, perhaps even after the business has ceased operation. Moreover, statutes of limitation may in some states not begin to run against children until they reach their majority.

- C. **In-Place Lead Liability:** Although In-Place Lead Liability coverage (commonly referred to as Pollution Legal Liability, or PLL) is a different coverage than E&O and CPL, the coverage intent can be similar to E&O and CPL.

There are two reasons why property owners may want to purchase this type of policy:

1. To supplement E&O and CPL policies purchased; or
2. To provide coverage for bodily injury or property damage resulting from existing lead or lead-based paint in a property if an owner is unable to procure the required E&O or CPL coverage.

This type of policy may be purchased as a substitute provided that the policy language covers bodily injury and property damage from lead or lead-based paint on or in the owner’s buildings and if E&O and CPL are not available for purchase. These policies are normally sold for a fixed term (three/five years, etc.) on a claims made basis.

### III. EXISTING COVERAGE AND POLICY FORMS

#### A. Existing Coverage

Lead liability coverage is often not provided under existing standard E&O policies for engineering or architectural services because the policy’s definition of “Professional Services” may not be broad enough to cover liability for lead-based paint-related work. Likewise, lead is also typically excluded in standard Commercial General Liability (CGL) coverage. Almost all CGL policies have a “pollution exclusion” provision, which excludes coverage for claims arising from “pollutants,” which can include asbestos, lead, lead-based paint, mold, or other environmental contaminants.

Therefore, the owners’ existing E&O and/or CGL may have a gap in coverage created when performing lead hazard evaluation and control work. Owners may obtain lead liability protection for their own lead-based paint-related work and require their contractors to obtain lead liability coverage for the contractors’ lead-based paint-related work performed on behalf of the owner, as discussed in detail below. Such insurance coverage can be purchased from specialty environmental carriers or risk retention groups. Subcontractors performing non-professional work should be required to present evidence that they have environmental coverage (CPL) that does not exclude coverage for lead-based paint-related claims (“lead exclusion”) and that the contractor and owner are additional insureds on the policy. As discussed above, the policy should be on a true occurrence basis.

**B. Professional Liability Errors and Omissions Insurance (E&O) for Lead Evaluation Work by Property Owners' Employees, Consultants and Construction Contractors**

Standard E&O insurance is intended to cover any negligent acts, errors, or omissions in rendering or failing to render the Professional Services as defined in the policy. As discussed above, owners' existing standard E&O policies are not designed to provide liability coverage for employees performing lead-based paint evaluations. Owners may purchase additional E&O insurance beyond the standard policy coverage to cover their employees or contractors for lead-based paint-related work conducted on their property. (Depending upon the market, these policies may be referred to as "miscellaneous" E&O coverage.) It is important to note that such policies should afford coverage for lead-based paint-related work in the definition of Professional Services. As of 2012, E&O coverage was available only on a "claims made" basis.

Most major carriers will refuse to add third parties as additional insureds to an E&O policy. This is a material difference between E&O coverage and CPL coverage. If the owner is added to an E&O policy as an "Additional Insured," the owner is expected to be covered for claims brought against the owner that arise directly out of work or projects performed on the owner's behalf. In other words, the "Additional Insured" owner will be protected from indirect liability arising out of the "Named Insured's" work. If this type of policy is not feasible, the owner may be able to purchase an E&O insurance policy in which the owner is the "Named Insured" and the consultant or contractor is an "Additional Insured," but the policy should be limited to lead-based paint evaluation work conducted on behalf of the owner.

**Lead Evaluations by Property Owners' Employees:** If lead-based paint evaluation work is conducted by employees, the owner should be the "Named Insured" on such a policy. Some insurance carriers require that each individual employee performing lead-based paint evaluation work be named on the policy as an "Additional Insured." As of the publication of this edition of the *Guidelines*, there is a benefit to naming individual employees on the policy in order to broaden the range of protection. Prior to binding coverage, the carrier may require submission of documents proving each individual employee proposed for coverage is properly trained and certified by the state or EPA. Owners should consider retaining copies of past and current employee training certificates related to EPA or State certification or licensure, and any other related documents. Carriers may also request information about the number, type and age of housing units under control of the owner applying for coverage.

**Lead Evaluations by Consultants:** If lead-based paint evaluation work is conducted by consultants, the consultant obtains the insurance, is the "Named Insured," and should list the owner as an "Additional Insured" on the policy. Most major carriers will refuse to add third parties as additional insureds to an E&O policy. This is a material difference between E&O coverage and CPL coverage. In the uncommon case that the owner is added to a consultant's E&O policy as an "Additional Insured," the owner will be covered for claims brought against the owner that arise directly out of work or projects performed by the consultant on the owner's behalf. In other words, the "Additional Insured" owner will be protected from indirect liability arising out of the "Named Insured's" (i.e., consultant's) work. If this type of policy is not feasible, the owner may be able to purchase an E&O insurance policy in which the owner is the "Named Insured" and the consultant is an "Additional Insured," but the policy should be limited to lead-based paint evaluation work conducted on behalf of the owner.

**Lead Evaluations by Construction Contractors:** It should be noted that non-professional contractors will normally not have E&O coverage. Certified renovation firms doing paint testing in unassisted housing using certified renovators who are not lead-based paint inspectors or risk assessors should have CPL without a lead exclusion.

**Housing Authorities (HAs) and Resident Management Corporations (RMCs):** The duties of an RMC hired by an HA are similar to those of a real estate management firm. If the HA has contracted for an RMC to manage a building or project, the owner should purchase an E&O insurance policy in which the HA is the "Named Insured" and the RMC, and its subcontractors, if applicable, are "Additional Insureds." If this type of policy is not available, the RMC should purchase an E&O insurance policy in which the HA is an "Additional Insured." The policy purchased by the RMC would be limited to lead-based paint evaluation work conducted on behalf of the HA, in connection with the HA's contract related to lead-based paint evaluation work. (Note: E&O coverage for non-professionals (HA, RMCs, etc.) may be difficult to obtain or, depending upon the market, may not be available. The default would be to a CPL or PLL type situation; but remember: these coverages are not identical.)

Although the Lead Safe Housing Rule does not categorize visual assessment as a lead-based paint evaluation method, owners may choose to purchase an E&O policy that covers the work of visual assessors, if the owner determines that such coverage is needed and if the coverage is available.

#### C. **Contractor's Pollution Liability (CPL) Insurance for Lead Hazard Control Work by Property Owners' Employees and Contractors**

Contractors Pollution Liability (CPL) insurance is intended to cover property damage and bodily injury claims resulting from the discharge, dispersal, release, or escape of lead or lead-based paint during lead hazard control work by employees, interim control contractors or abatement contractors. It is important to note that such policies must afford coverage for lead and lead-based paint in the definition of "pollutants."

**Lead Hazard Control Work by Owners' Employees:** If lead hazard control work is conducted by the owner's employees, the owner should be the "Named Insured" on such a policy. Some insurance carriers require that each individual employee performing lead hazard control work be named on the policy as an "Additional Insured." (See comments above.) Prior to binding coverage, the carrier may require submission of documents proving each individual employee proposed for coverage is properly trained and/or certified, as applicable, by the state or EPA. Owners should retain copies of past and current employee training certificates related to EPA or State certification or licensure, and any other related documents. Carriers may also request information about the number, type and age of housing units under control of the owner applying for coverage.

**Lead Hazard Control Work by Contractors:** If lead hazard control work is conducted by interim control contractors or abatement contractors separate from the owner, the contractor obtains the insurance, with the contractor being the "Named Insured" and the owner listed as an "Additional Insured" on the policy. Such contractors must be properly trained and/or certified, as applicable. If the owner is added to a contractor's CPL policy as an "Additional Insured," the owner will be covered for claims that arise directly out of work or projects performed by the contractor on the owner's behalf. In other words, the "Additional Insured" owner wants to be protected from indirect liability arising out of the "Named Insured's" (i.e., contractor's) work. If this type of policy is not feasible, the owner can purchase a CPL insurance

policy in which the owner is the “Named Insured” and the interim control (trained in Lead Safe Work Practices) contractor or abatement contractor is an “Additional Insured,” but the policy should be limited to lead hazard control work conducted on behalf of the owner.

**Housing Authorities (HAs) and Resident Management Corporations (RMCs):** The duties of the RMC hired by an HA are similar to those of a real estate management firm. If the HA has contracted for an RMC to manage a building or project, the HA should purchase a CPL insurance policy in which the HA is the “Named Insured” and the RMC, and its subcontractors, if applicable, are “Additional Insureds.” If this type of policy is not available, the RMC should purchase a CPL insurance policy in which the RMC is the “Named Insured” and the HA is an “Additional Insured.” The policy purchased by the RMC would be limited to lead hazard control work conducted on behalf of the HA, in connection with the HA’s contract related to lead hazard control work.

#### D. **Claims-Made and Occurrence Coverage for Lead Hazard Control Work**

These are two types of policy coverage for E&O and CPL policy forms. Each type of policy contains “triggers” that describe when a claim or lawsuit may be covered. A “claim” is a demand for payment under the policy. An “occurrence” is frequently defined as an exposure, event or accident, including continuous or repeated exposure to the same general harmful conditions.

In an “Occurrence” policy, as long as the circumstance resulting in a claim occurs during the policy period, a claim may be covered regardless of when it is made against the insured and reported to the insurer. This is so even if the insured business ceases operations, files for bankruptcy or changes carriers several times over a period of years. Occurrence policies are preferable because they contain an indefinite claim-reporting period. However, as of 2012, occurrence forms are typically difficult to obtain from specialty insurance companies or risk retention groups covering lead-based paint-related work.

“Claims-Made” policies require that the circumstances resulting in a claim must occur after the retroactive date specified in the policy declarations, and the claims must be made against the insured and reported to the insurer within the policy period. “Some “Claims-Made” policies have a reporting period extending after the end of the policy period, during which a claim can be made and reported to the insurer, for a circumstance that occurred during the policy period. An extended reporting period is sometimes referred to as “tail” coverage. Tail coverage is usually expensive and the coverage will still cease in relatively short order. See discussion above concerning children, claims and statutes of limitations. Changing carriers will rapidly end coverage, but the insured must address this through having the new carrier extend the retroactive date to the retroactive date of the expiring/non-renewed policy. The potential issue in such situations is whether or not the new carrier is willing to do so. (see Section V).

Either “Claims-Made” or “Occurrence” coverage for lead hazard control insurance may be suitable. See discussions above, however. HUD strongly recommends that owners and their contractors purchase occurrence-based lead liability coverage, when available, instead of a “claims-made” type of policy with an extended reporting period. Because HUD recognizes that, as of 2012, when this guidance was published, occurrence policies are difficult to obtain, it encourages property owners to engage their insurers on the issue of the availability of occurrence policies. If a “Claims-Made” policy is purchased, the policy should provide an automatic extended reporting period of at least thirty days for no additional premium. It would be in the best interest of the owner if the policy should also allow for the purchase of an optional extended reporting period of at least one year. Because the occurrence type of coverage may not be available for certain types of work and operations,

either type of coverage will suffice. The lead liability coverage must remain in effect during the entire period of the lead-based paint evaluation and control work. The insurance certificate evidencing the claims made coverage should show the policy inception and expiration date, and should contain a provision requiring the broker to notify the additional insured of any cancellation, early termination or material alteration in the policy (such as a claim eroding limits available under the policy.)

#### **Completed Operations Coverage.**

CPL coverage should include “completed operations” coverage (see Section V). Even though the operations are deemed to be “completed” by the contractor, the loss or injury is deemed to be as a result of those operations. This type of coverage is often covered under general liability insurance, but sometimes is purchased by a contractor/manufacturer over and above general liability to cover loss or injury that occurs off the insured’s property.

#### **E. Proof of Contractor Coverage and Recordkeeping**

Whenever an owner requires a contractor to purchase E&O or CPL insurance, proof of the insurance should be provided to the owner prior to the commencement of work. A copy of a Certificate of Insurance identifying the owner as an “Additional Insured” should be submitted and retained by the owner as an important record associated with the lead-based paint work being performed. Owners must retain a current certificate of insurance as long as the owner performs or contracts for lead-based paint-related work. Owners should keep lead-based paint-related records for ongoing lead-based paint maintenance work in public housing for at least three years and, preferably, for as long as the owner controls the property.

The certificate should show the insurance policy period corresponding to the date(s) of work performed by the insured contractor. Certificates should also state the carrier, type of insurance, policy number, policy effective date and expiration date, and limits of liability. The certificate should also include a minimum 30-day notice of cancellation requirement to the owner.

#### **F. Explanation of Policy Limits and Aggregates**

Most E&O and CPL policies have two stated limits of liability:

1. The “per occurrence” or “per claim” limit. As discussed above, a “claim” is a demand for payment under the terms of the policy. An “occurrence” is frequently defined as an exposure, event or accident, including continuous or repeated exposure to the same general harmful conditions. The “per occurrence” or “per claim” limit is the maximum amount the insurer will pay for a single covered claim or occurrence.
2. The “aggregate limit.” This is the maximum overall limit of liability for a policy period. The aggregate policy limit is intended to be the maximum amount paid out for claims arising out of all occurrences that take place during the policy period. For example, if the contractor’s liability policy has a \$1,000,000 “aggregate” policy limit and other unrelated claims totaling \$600,000 have already been made against the policy, only \$400,000 is potentially available to cover additional claims arising out of the owner’s lead-based paint-related work.

## IV. REQUIRED POLICY LIMITS AND DEDUCTIBLES

- A. **Lead-Based Paint Evaluations and Other Professional Services:** Whether the owner's employees or its contractor physically performs the evaluation work (lead-based paint inspections, lead-based paint risk assessments, lead-based paint testing, and clearance examinations after lead hazard control work), HUD recommends that any policy insuring for evaluation work comply with the minimum requirements below. (See discussion above for the source of the insurance requirement.)
1. **Form:** The policy form used to cover evaluation work should be an E&O form, which includes lead-based paint evaluation work in the definition of "Professional Services" (or similar). If a "Claims-Made" E&O policy is purchased, the policy should provide an automatic extended reporting period of at least thirty days for no additional premium. The policy should also allow for the purchase of an optional extended reporting period of at least one year. (Note: Occurrence E&O is not readily available in the marketplace as of the time of publication of this edition of the *Guidelines*)
  2. **Limits of Liability for Evaluation Work:** The limits of liability should be a minimum of \$1,000,000 per claim or per occurrence. If the policy contains an aggregate limit, the minimum limit should be \$1,000,000. The owner may choose higher limits of liability based on claims history in its area or its own claims experience.
  3. **Deductible:** If a deductible is applicable, it should not exceed \$5,000 per claim or per occurrence. Deductibles of less than \$5,000 may be elected if the owner chooses, although this may cause an increase in premium which may be passed through in some form to the owner.
  4. **Cancellation:** The insurance company should provide the owner (as the "Named Insured or "Additional Insured") with a notice of policy cancellation for any reason; a minimum of 10 days advance notice before cancellation for non-payment of premium; and a minimum of 30 days advance notice before cancellation is effective for any reason other than non-payment of premium. The broker's certificate should confer upon the broker the duty to also notify the owner of these developments – as well as any material change in policy limits or coverages.
- B. **Lead Hazard Reduction Work:** Whether the owner or its contractor physically performs the lead hazard control work (abatement or interim controls, including on-going lead-based paint maintenance), the owner should consider the recommendations below for any policy insuring owners for lead hazard control work.
1. **Form:** The policy form used to cover lead hazard control work should be a Contractor Pollution Liability (CPL) policy form that includes lead and lead-based paint in the definition of "pollutants" (or similar characterization). If a "Claims-Made" CPL policy is purchased, the policy should provide an automatic extended reporting period of at least thirty days for no additional premium. The policy should also allow for the purchase of an optional extended reporting period of at least one year.
  2. **Limits of Liability for Lead Hazard Control Work:** The limits of liability should be a minimum of \$1,000,000 per claim or per occurrence. If the policy contains an aggregate limit, the minimum acceptable limit should be \$1,000,000. The owner may choose higher limits of liability based on claims history in its area or its own claims experience.
  3. **Deductible:** If a deductible is applicable, it should not exceed \$5,000 per claim or per occurrence. Deductibles of less than \$5,000 may be elected if the owner chooses, although this may cause an increase in premium which may be passed through in some form to the owner.

4. **Cancellation:** The insurance company should provide the owner (as the “Named Insured or “Additional Insured”) notice of policy cancellation for any reason; a minimum of 10 days advance notice before cancellation for non-payment of premium; and a minimum of 30 days advance notice before cancellation is effective for any reason other than non-payment of premium. The broker’s certificate should confer upon the broker the duty to also notify the owner of these developments – as well as any material change in policy limits or coverages.

C. **Recommended Minimum Characteristics for Insuring Entities**

The insurer should be approved to issue insurance policies in the State, District or territory in which the owner is domiciled. Alternatively, the insuring entity can be a domestic risk retention group operating under the Federal Liability Risk Retention Act. It should be understood that pollution E&O policies, PLL policies and other policies may be issued on a “surplus lines” basis (also called by the industry term “non-admitted paper”), which may have flexible language but does not require the state insurance commission’s approval, and, as a result, is generally not able to access state funds in the event of the insolvency of the carrier or if the carrier goes out of business.

The insurer should have a minimum A.M. Best Financial Strength Rating of at least A (the highest rating is A++), and an A.M. Best Financial Size Category of at least VII (out of XV). The ratings and categories are defined by A.M. Best Company, a credit rating agency serving insurance sectors. For more information, see its website at <http://ambest.com>.

## V. DEFINITIONS

For the purpose of this Appendix, definitions are provided for the terms below. For regulatory definitions, please see the applicable regulations.

**Clearance examinations after lead hazard control work:** Visual examination and collection of lead dust samples by an inspector or risk assessor, or, in some circumstances, a sampling technician, and analysis by a EPA-recognized laboratory upon completion of an abatement project, interim control intervention, maintenance or renovation job that disturbs lead-based paint (or paint presumed to be lead-based.) For abatement projects, the clearance examination is performed to ensure that lead exposure levels do not exceed clearance standards established by the EPA at 40 CFR 745.227(e)(8)(viii); HUD’s dust-lead standards for clearance after interim control projects are found at 24 CFR 35.1320(b)(2)(i).

**Completed Operations coverage:** An insurance product that covers the liability incurred by a contractor for property damage or injuries that may happen to a third party once contracted operations have ceased or been abandoned. Even though the operations are deemed to be “completed” by the contractor, the loss or injury is deemed to be as a result of those operations. Completed operations insurance contracts are applied to construction products or the manufacturing of consumer goods and medicines.

**Lead-Based Paint Inspection:** A surface-by-surface investigation to determine the presence of lead-based paint (in some cases including dust and soil sampling) and a report of the results.

**Lead-Based Paint Risk Assessment:** An on-site investigation of a residential dwelling to determine the existence, nature, severity, and location of lead-based paint hazards. Risk assessments, which must be conducted by a certified risk assessor, include an investigation of the age, history, management, and maintenance of the dwelling, and the number of children under age 6 and women of childbearing age who are residents; a visual assessment; limited randomized environmental

sampling (i.e., collection of dust wipe samples, soil samples, and deteriorated paint samples); and preparation of a report identifying abatement and interim control options based on specific conditions. HUD's Lead Safe Housing Rule requires risk assessments for certain types and amounts of HUD assistance; in these cases, a risk assessment must be no more than 12 months old to be considered current.

**Lead-Based Paint Testing:** The process of determining, by a certified lead-based paint inspector or risk assessor, or by a certified renovator in unassisted housing, the presence or absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**Reevaluation:** The combination of a visual assessment and collection of dust and, as appropriate, soil samples performed by a certified risk assessor to determine if the housing is free of lead-based paint hazards, and determine whether previously implemented lead-based paint hazard control measures are still effective.

**Retroactive Date:** A provision found in many claims-made policies that eliminates coverage for injuries or damage that occurred prior to a specified date even if the claim is first made during the policy period. A retroactive date is not required. If one is shown on the policy, any claim made during the policy period on a loss that occurred before the retroactive date will not be covered.

## VI. COORDINATION WITH COUNSEL ON INDEMNITY/HOLD HARMLESS LANGUAGE

It is important that insurance provisions be coordinated with the indemnity/hold harmless/defense provisions in the services or work agreement. The owner should retain experienced contract and insurance counsel to make sure that, to the extent reasonably possible, the risks shifted under the indemnity provisions are (A) enforceable under applicable state law and do not run afoul of "anti-indemnity" laws or cases; and (B) are funded as "insured contracts" under the relevant policies. Overextended indemnities create uninsurable risks which, in turn, raise questions about the ability of the claimant to collect.