

**THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

**LEAD POISONING PREVENTION AND CONTROL:  
APPLICATION AND INSTRUCTIONS FOR  
EXEMPTION FROM ADMINISTRATIVE CODE § 27-2056.4(a)**

Article 14 of Title 27 of the Administrative Code of the City of New York concerns lead poisoning prevention and control in multiple dwellings in the City. Under § 27-2056.4(a) of Article 14, any paint or similar surface-coating material in the interior of any dwelling unit in a multiple dwelling erected prior to January 1, 1960, in which a child under six years of age resides, is presumed to be lead-based paint. Article 14 provides for certain responsibilities of and requires specific actions by owners of pre-1960 multiple dwellings based upon this presumption. However, Administrative Code § 27-2056.4(b), which is part of Article 14, provides that an owner of a pre-1960 multiple dwelling may apply to the Department of Housing Preservation and Development (HPD) to have his or her multiple dwelling exempted from the presumption contained in § 27-2056.4(a). In order to apply for the exemption, owners should complete this application and submit any required additional documentation as provided herein.

**ONLY A REGISTERED OWNER OR REGISTERED OFFICER  
OR DIRECTOR OF A CORPORATE OWNER OR REGISTERED MANAGING AGENT OF A  
MULTIPLE DWELLING ERECTED PRIOR TO JANUARY 1, 1960  
MAY APPLY FOR AN EXEMPTION FROM ADMINISTRATIVE CODE § 27-2056.4(a).**

**Instructions—Owners:**

1. An owner who wishes to apply for an exemption from § 27-2056.4(a) must submit an application to HPD, completed by the owner and including the required supporting documents. The application form, and instructions for completion of the application and preparation of supporting documents are attached. The completed application should be sent to:

Department of Housing Preservation and Development  
Bureau of Environmental Hazards  
51-15 Flushing Ave., Maspeth, N.Y. 11378  
Att: Lead Exemption

2. An owner must submit a written determination by a certified inspector or risk assessor attesting that each dwelling unit in the multiple dwelling is free of lead-based paint, or that the paint has been contained so that each surface tests negative for lead-based paint. The method of testing and the documentation necessary to support this determination are described below. An application for an exemption must include a determination for every dwelling unit in the multiple dwelling. **Applications that do not include a determination for every dwelling unit will not be accepted.**
3. A copy of the certified individual's inspection report, and his or her certificate of training must also be submitted with the application.

4. You must be sure that the individual that you hire to perform the inspection is properly certified and has read the instructions for testing described below. A certified inspector or risk assessor is someone who has successfully completed a training program accredited by the United States Environmental Protection Agency (EPA) and has received a certification as a risk assessor or inspector pursuant to Title 40 Code of Federal Regulations (CFR) Part 745, subparts L and Q. You should ask to see a copy of the individual's certification prior to contracting for this service.
5. The certified individual who performs the inspection will be required to attempt access to every unit in the building, whether or not, under the proper testing protocol, he or she needs to perform a test in the particular unit. You must be sure to assist the certified individual in arranging access to the units in your building. The certified individual will be required to submit, along with his or her inspection report, a written explanation for each unit that he or she is unable to access, detailing the attempts made to gain access and the reasons why the attempts were unsuccessful.

**Instructions—Certified Individuals Who Perform an Exemption Inspection:**

1. An owner who wishes to apply for an exemption must submit a written determination made by an inspector or risk assessor certified pursuant to Title 40 CFR Part 745 subparts L and Q (certified individual) that each surface and component in each dwelling unit in the multiple dwelling is free of lead-based paint, as defined in Article 14 of Title 27, and the rules promulgated thereunder, or that as a result of a substantial alteration of each dwelling unit, the lead-based paint on each surface and component in each dwelling unit has been contained, so that each surface tests negative for lead-based paint. The term “contained” means that every surface containing lead-based paint has been covered, enclosed and sealed with gypsum wallboard or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface. The term “contained” does not include encapsulation of such surfaces, unless the use of an encapsulant has been specifically approved by HPD.
2. An application for an exemption must include a determination for every dwelling unit in the multiple dwelling. Applications that do not include a determination for every dwelling unit will not be accepted. An owner must provide the written results of the testing and inspection by the certified individual for each dwelling unit, and a certification by such inspector or risk assessor as provided in paragraph one. The certification of the absence of lead-based paint or the containment of lead-based paint must include all surfaces and components in each unit, including, but not limited to, walls, ceilings, doors, windows, window sills, window wells, radiators, standpipes, and trim in each dwelling unit. A copy of the certified individual's certificate of training must also be provided.
3. HPD's rules regarding exemption applications provide that the inspection for exemption must be performed in accordance with Title 40 CFR § 745.227(b). The application of that inspection protocol to the exemption application is explained herein. Title 40 CFR § 745.227(b) concerns work practice standards for conducting inspections for lead-based paint. Since the inspection for exemptions is related only to interiors of dwelling units, certain aspects of Title 40 CFR § 745.227(b) are not relevant to the exemption inspection. For example, results of testing of components in common areas need not be submitted for purposes of an exemption application. In addition, Title 40 CFR §745.227(b) provides that in inspecting each dwelling unit, each component with a distinct painting history must be tested for lead-based paint, except

when the certified individual determines that the component was replaced after 1978 or does not otherwise contain lead-based paint. For purposes of an exemption application, however, since Administrative Code § 27-2056.4(a) bases the presumption on the date of January 1, 1960, an inspector may use that date when making a determination solely for purposes of an exemption from § 27-2056.4(a). Finally, certified individuals should be aware that Title 40 CFR § 745.227(a) provides that when performing a lead-based paint activity such as an inspection under subdivision (b) of that section, the certified individual must perform the activity using documented methodologies, including, but not limited to, the U.S. Department of Housing and Urban Development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD Guidelines). The performance guidelines for lead-based paint inspections are set forth in Chapter 7 of the HUD Guidelines, and their application in the context of an exemption application are described below.

There are several important points to note regarding the application of Chapter 7 methodologies with respect to an inspection conducted to support an application for exemption. First, certified individuals should be aware that Chapter 7 states that although the paint-chip sampling and measurement techniques used for paint inspections are similar to the techniques used for risk assessments, the number of paint measurements or samples taken for paint inspections "is considerably greater than the number of paint samples required for risk assessment, because risk assessments measure lead only in deteriorated paint." (HUD Guidelines, Chapter 7, p. 7-2 (1997 Revision)) Since owners who are applying for an exemption from Administrative Code § 27-2056.4(a) must demonstrate the absence or containment of lead paint, *whether or not on a deteriorated surface*, HPD's rules require that an inspection, and not a risk assessment, be performed. Certified individuals should be aware of this distinction when contracting with an owner for an inspection—the service required to be performed in order to apply for an exemption is not a risk assessment.

It should also be noted that the inspection conducted and certification made pursuant to these instructions is solely for the purpose of complying with the application requirements to obtain an exemption from Administrative Code § 27-2056.4(a). These instructions are not intended to affect or change any provision of local, state or federal laws, or the requirements for compliance therewith.

4. The certified individual may choose testing combinations and select dwelling units according to the methodology set forth for multi-family housing in Chapter 7 of the HUD Guidelines only in those instances in which the owner provides the certified individual with documentation which shows that ALL surfaces and components in a building have been replaced since 1960. The identification of testing combinations and choice of dwelling units to sample must be based upon written documentation supplied to the certified individual by the owner regarding common construction and painting history of such components and units. The number of dwelling units chosen to be tested must also comply with the Chapter 7 requirements specifically applicable to pre-1960 buildings. In the absence of such documentation by the owner, the certified individual must test each dwelling unit in order to provide the required certification.
5. Since, in accordance with requirements of Administrative Code § 27-2056.4(b) and the rules promulgated thereunder (28 NYCRR §11-07), the determination of the absence or containment of lead-based paint must be made for every dwelling unit in the building, the certified individual must make a reasonable, documented attempt to access every unit in the building, regardless of whether a dwelling unit is one which is part of his or her statistical sample, to visually confirm the owner's documentation of common construction and painting history for the unit and the components therein. For any

dwelling unit which the certified individual is unable to access, the written report provided by such individual with the exemption application must specify the attempt made to access the unit, and the reasons why such access could not be achieved. An exemption application will be denied if the certified individual is unable to access a sufficient number of dwelling units to comply with the statistical sampling requirements of Chapter 7, and may also be denied, in the sole discretion of HPD, if it is determined that there has not been a reasonable attempt to inspect a sufficient number of the remaining units for which an assumption is being made about the common construction and painting history. As a general guideline, there should be at least two attempts made to access each dwelling unit, and such attempts should be made at a reasonable time of day where it is likely that occupants will be available to provide access. As noted above, the inspection report by the certified individual must provide a determination for every dwelling unit in the building, including those units to which the certified individual has been unable to gain access.

**APPLICATION FOR EXEMPTION FROM ADMINISTRATIVE CODE § 27-2056.4(a)**

**OWNER: FILL OUT THIS APPLICATION COMPLETELY,  
SIGN IT, AND HAVE IT NOTARIZED.  
ATTACH ALL REQUIRED DOCUMENTATION.  
AN INCOMPLETE APPLICATION WILL BE DISAPPROVED AND RETURNED.**

**NAME:**

**ADDRESS:**

**TELEPHONE NO.:**

**ADDRESS OF MULTIPLE DWELLING:**

**NO. OF UNITS:**

**MDR #:**

I, \_\_\_\_\_, am the registered owner or registered officer or director of a corporate owner or registered managing agent of the above-referenced multiple dwelling. I am submitting this application for an exemption from Administrative Code § 27-2056.4(a) on the basis that I have obtained a determination from an inspector or risk assessor certified pursuant to Title 40 CFR Part 745 subparts L and Q that each surface and component in each dwelling unit in the above-referenced multiple dwelling is free of lead-based paint, or, that as a result of a substantial alteration of each dwelling unit the lead-based paint on each surface and component within each dwelling unit has been contained so that each surface and component in each unit tests negative for lead-based paint. I have provided the certified individual with a copy of the instructions for this application.

**I am providing the following information and documents in support of this exemption application:**

1. The date(s) when substantial alterations were made to the dwelling units in the building, and a description of the work performed: (attach additional pages as needed, including any plans, blueprints, permits, invoices, etc., documenting the work performed):
2. The date(s) of the inspection performed by the individual certified pursuant to Title 40 CFR Part 745 subparts L and Q:
3. A copy of the inspection report prepared in the format provided by 40 CFR §745.227(b) and Chapter 7 of the HUD Guidelines, which includes a determination for every dwelling unit, and an affirmative statement by the certified individual of a visual inspection of each dwelling unit or documentation as to why he or she was unable to gain access to any particular unit.

4. A copy of the certificate of training of the certified individual who performed the inspection and prepared the inspection report in support of this application for exemption.
5. A copy of all documentation supplied to the certified individual who performed the inspection which demonstrates similar construction and painting history for dwelling units and the components therein, in support of the testing combinations and unit selection utilized by such certified individual to perform the inspection.

State of New York )

County of \_\_\_\_\_ )

\_\_\_\_\_  
(Authorized Signature)

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_

**AFFIDAVIT BY CERTIFIED INDIVIDUAL**

I \_\_\_\_\_ (print name), performed the inspection and testing and/or sampling for lead-based paint at the premises located at \_\_\_\_\_ (address) on \_\_\_\_\_ (date).

I am certified to perform such inspections and testing and/or sampling under Part 745 of Title 40 of the Code of Federal Regulations subparts L and Q. I read and followed the instructions provided for the Application for Exemption from Administrative Code § 27-2056.4(a), and I performed the inspection and testing and/or sampling in accordance with those instructions and Title 40 CFR § 745.227, Chapter 7 of the U.S. Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing as applicable to the exemption application, and Administrative Code § 27-2056.4(b), and Title 28 NYCRR §11-07.

The report of the inspection, and the determination made pursuant to Title 28 NYCRR § 11-07(b) is annexed to this affidavit. I understand that the determination that I am making includes every dwelling unit in the above referenced premises. In addition, I have attached a copy of my certificate of training to this affidavit and I have attached a list of any dwelling unit(s) which I was unable to access for a visual inspection to determine common painting or construction history, including a description of the efforts that were made to gain access to such units and the reason for the inability to gain access to such unit(s).

State of New York                    )

County of \_\_\_\_\_)

\_\_\_\_\_  
(Signature)

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_