

What you need to do when demolition begins.

- 1- Keep a record of everything related to your efforts to stop the dust contamination in your apartment. You must record what happened and when. Establish a paper trail of all telephone calls, letters and complaint records to the landlord and to city agencies. All letters should be sent certified return receipt. When calling city agencies try to get the name of the person you are talking to and their position or title in the agency. Note the day, time and what was discussed. Make photos of conditions and try to have a witness where applicable.
- 2- Keep a record of what happens regarding the work site and workers. Complain to 311 when workers exceed the building permit or illegally cut services, work early or late hours or use unsafe work practices. All tenants affected by the dust hazards should complain to the landlord and call in 311 complaints.
- 3- Call 311. It is important to direct the complaint to the right agencies. When Croman renovates an apartment for de-regulation to market rents there are several agencies that have jurisdiction over the work and how it is done. In a situation where untrained workers using unsafe work practices are causing hazards for the occupants of the building, it is very difficult to get the work stopped immediately through a 311 call.
- 4- 311 will direct a complaint of dust entering the halls and apartments to the Dept. of Health air quality complaints. This will not stop the demolition unless you report in the complaint that a child under the age of six is resident in the building. If a child is resident and the building is pre1960, there should be a quick response by an inspector because of child lead poisoning hazards. If there is no child in residence a notice will be sent to the landlord to investigate the complaint and correct. You will receive a notice of receipt of complaint and landlord notification from the DOHMH. If several complaints are received by DOHMH they may send an inspector a few weeks later, often after the demolition is over and no dust is in the air, resulting in a "no cause for action" report. A violation will be issued only if the inspector catches illegal work practices in progress. The same is true for HPD and DOB. HPD inspectors will test for and issue a lead hazard violation only if there is peeling paint present where a child lives. HPD inspectors will not test for lead in dust or issue a violation for dust resulting from unsafe work practices in construction after the work has been completed. It is the landlord's responsibility to make tests for toxins and clean dust contamination.
- 5- Use 311 to create a paper trail, but you must have the necessary information to use 311 effectively and to get illegal work stopped.
 - A) The 311 operator will write into record whatever you tell them regarding your complaint. This record can be requested from DOHMH. It is important to describe everything you are complaining about. You must say the complaint is for air quality because demolition and construction is putting dust into the air. The dust is entering your apartment through the floor or from the hall. You must tell them the apartment number where work is occurring, the hours work is in progress, that safe work practices are not being used to prevent dust dispersion and that you must leave the

building when work is in progress because you can not breath the toxic air. Also that dust is settling on everything in your apartment and you are concerned about the toxins in the dust.

- B) The 311 operator will, or should, ask if there is a child under the age of six living in the building. If there is, say so and they should transfer you to the lead poisoning prevention part of the DOHMH who will tell you what to do. If there is no child resident in your building say so, however you must tell 311 that the work being done is in a pre 1960 building and that the apartment is a vacancy turnover. 311 will not ask you this. The same work practices must be complied with in a vacancy turnover as required for a child in residence. Say that the landlord is in violation of *Health Code ref. 173.14(e)(3)(A), (B), (C) Occupant Protection: Apt Turnover* and also of *Local Law 1 of 2004 Article 14- §27-2056.8 and 27-2056.11* of the Housing Maintenance Code. You can also give any of the violations from the violation list for lead hazard abatement you think apply to you.
- C) The 311 operator may transfer you to the lead poisoning prevention dept. of DOHMH where you will have to repeat everything above. Or, the 311 operator may not be able to go anywhere with what you say and may just submit the complaint as described in #4 above. If that happens, call Dept. of Health Lead Poisoning at 212-226- 5323 and tell them the following:
- 1) You made an air quality complaint with the DOHMH and repeat the information in 5-A above.
 - 2) Demolition is being done in a pre1960 vacancy turnover apartment.
 - 3) No advance notice to the tenants that work would begin was posted in the building.
 - 4) Un-certified workers were not using required safe work practices for lead abatement.
 - 5) Lead paint contaminated dust from the demolition is penetrating into areas adjacent to and exterior to the work site, to public areas, and is affecting the building occupants.
 - 6) The landlord did not make the required notification to the DOHMH that an area of lead paint surface more than 100sq.ft.will be disturbed in a vacancy turnover apartment.
 - 7) If the demolition is still in progress ask that an inspector be sent immediately and issue a class C violation for the laws sited in 5-B above and issue a stop work order.
- D) The DOHMH may or may not send an inspector. If an inspector comes work may not be in progress at the time or the demolition may have been completed. If a violation is not issued and the work is completed you will have to go to HP court to get a violation issued and a clean up of your apartment ordered.
- 6- After making the air quality complaint call 311 again and say you want to make a unsafe work practices complaint with the DOB and that there is an ongoing demolition/renovation in the building that causes “airborne particulate matter” (the fancy New York City government descriptor for “dust”) for more than 15

minutes. New York City Administrative Code §24-146 can be used to stop the demolition/construction until proper wetting and cleaning procedures are applied. That code does not differentiate between the types of dust, it regulates all dust. You can also try calling the Interior Demolition unit of the DOB at 212-442-1544/1698 and tell them you made a complaint with 311 for a demolition in progress and that your apartment is being contaminated. According to the DOB Interior Demolition Unit, an inspector will be sent within a few hours if you tell 311 that the demolition in progress is compromising "fire integrity". In the event the Department of Buildings fails to timely respond to your complaint, which is likely, you can go to the Supreme Court to have a temporary restraining order ("TRO") issued to immediately halt construction. This can be effective if the demolition/construction extends over a long time, but may not be able to stop work that is over quickly before "TRO" can be obtained and an inspection made. By entering *Tenant Protection Plan* into the search box on the DOB web site you will get information on what safe work practices and tenant protection is required by the DOB during construction.

- 7- It will be very difficult to get Croman to clean the dust from your apartment. He will do nothing, nor respond to your calls and letters, if a violation has not been issued. Once your apartment has been contaminated, HPD will not issue a violation if a child is not resident. The only option to clean your apartment is to pay for it and sue Croman for the cost or to file an HP action and get the court to order Croman to clean the contaminated dust according to law at his expense. In each case you will need to have the dust in your apartment tested by a certified firm to check for toxin levels. HPD and DOHMH and DOB only regulate lead and asbestos. EPA and DOHMH will investigate other toxic hazards in dwellings but the landlord is only required to comply with the laws that apply to lead and asbestos. Any other claims for damage or loss from dust, debris or toxins have to be made in another court, not HP court.

OVERVIEW

The issue in this case is the enforcement of an obscure safe work practices regulation in the lead poisoning prevention laws, Article 14 of the Housing Maintenance Code, under the jurisdiction of HPD and DOHMH. This regulation is relevant to the loss of affordable housing through high rent vacancy decontrol because it covers work done in apartments most frequently targeted for decontrol. A NYC rent regulated apartment is usually in a building constructed before 1960, the year the use of lead based paint in NY was prohibited. Many of these apartments have not been maintained over the years and have serious lead paint hazards. When lead based paint surfaces are disturbed hazardous lead paint contaminated dust is created.

Non-compliance by landlords with required safe work practices causes lead paint dust contamination through out the building and in other apartments where no work is being done. HPD and DOHMH will not issue a violation to the landlord ordering the clean up of apartments contaminated in this way unless a child under the age of six is resident.

Demolition and renovations done in any occupied building built before 1960 in a **turnover vacancy** is required to comply with DOB safe work regulations and HPD and DOHMH lead abatement safe work practices, but with out the child in residence requirement. Safe work practices are required to prevent the spread of lead contaminated dust to other parts of the building and affecting other occupants. If dust does penetrate to other areas of the building, it must be tested for lead levels and, if over the allowed limits, cleaned by an EPA certified firm to remove the lead dust and then an independent third party testing firm must make final tests for lead hazard clearance levels. The results must be given to the currant tenant, to the new tenant in a vacancy turnover, and to HPD, if a lead hazard violation was issued, showing safe lead levels.

These regulations are under the jurisdiction of the HP part of NYC Civil Court because housing maintenance codes and regulations are enforced by HPD. In an HP action against my landlord, claiming dust contamination caused by non-compliance with HPD safe work practice regulations, the judge said it was the first time this issue had come before him. He agreed with my argument that, while the landlord did not prevent dust from contaminating my apartment as required, the requirement that the dust contamination be cleaned and clearance tested could still be enforced since the lead dust hazard still existed.

The judge gave the landlord the option of agreeing in a settlement to clean the dust as required by law, or to go to trial and have a class C violation served ordering a clean-up. The judge ordered the enforcement of regulations where HPD and DOHMH did not. The landlord agreed to a settlement. The landlord's lawyer requested a confidentiality agreement be included in the stipulation because he did not want other tenants learning about the judge's position. I did not agree with his request. The case eventually went to trial, after 8 adjournments, but was settled with out a violation being issued because the landlord agreed to comply with the law regarding final lead clearance tests. My case is now in settlement pending the completion of the clean up agreement. It is important for this issue to go to trial again and for the judge's interpretation of the law to be on record.

SCC- HP COURT ACTION STRATAGY MEETING

- **Purpose.**

To form a strategy and plan to bring a series of tenant HP actions against Croman for lead dust hazards caused by non-compliance with required HPD and DOHMH regulations covering construction done in a pre 1960 vacancy turnover apartment.

- **Issues can you bring to HP court.**

HP court will hear cases concerning anything regulated by the Housing Maintenance Code and under HPD jurisdiction.

HP court does not have jurisdiction in DOB matters. HP court does not address rent or any money claims. Any complaints against the landlord resulting from noncompliance with the DOB Construction Code must go through the DOB. If DOB writes a construction violation, it is resolved by the ECB. However the DOB does have a Tenant Protection Program.

If there is an issue of injury or loss caused by construction, you must go to claims court.

- **Hazardous conditions you must have in your apartment to apply the law.**

To be regulated by the lead poisoning prevention laws, the building you live in must have been built before 1960. Construction work must be in a vacant turnover apartment that will be rented or “turned over” to a new tenant or work in public common areas of the building (halls).

Required DOHMH notification, safe work practices and trained certified workers were not used for work disturbing lead paint surfaces. The illegal work caused your apartment and common areas in the building to be contaminated with dust. The contractor doing the work is not on the EPA Certified Lead Abatement Firms list. Test samples of the dust made by an EPA certified testing firm show lead levels over the permitted levels.

If a child under the age of six is living in the building then more regulations apply, but for the present we are only considering cases where no child is involved.

- **Landlord notification and 311 complaints.**

Letters notifying Croman of the dust condition must be sent certified return receipt. Also the lead test results must be sent informing him of the confirmed lead hazard. Call 311 and make complaints to DOHMH, HPD and also to DOB if construction is still in progress. If there is no response from Croman after two weeks go to the Court Clerk to obtain an Order to Show Cause, which must be sent to Croman.

- **Order to show cause.**

In the order to show cause the dust complaint must be made alone without any other maintenance complaints listed. Do not ask for an inspection because HPD will not issue a violation for dust if a child is not resident. How the order to show cause is worded is important because that is the point the Judge will address and you can't change it once it is in motion. How we fill out the Order to Show Cause form should be discussed with a lawyer familiar with HP court.