

GUIDELINES TO PREVENT RETALIATORY EVICTIONS
Rhode Island Department of Attorney General

Pursuant to R. I. Gen. Laws § 23-24.6-23(c)(4), the Department of Attorney General hereby establishes these guidelines to prevent retaliatory actions by property owners against tenants on the basis of complaints or notices of violations arising from the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 et seq., and the Lead Hazard Mitigation Act, R.I. Gen. Laws § 42-128.1-1 et seq., or when a pregnant woman or family with one or more children under age six (6) in any manner seeks to enforce their right to lead-safe or lead-mitigated housing.

Section 1: Where complaints or notices of violations arise under R. I. Gen. Laws chapter 23-24.6, R. I. Gen. Laws chapter 42-128.1, and/or regulations promulgated thereto, or when a pregnant woman or a family with one or more children under age six (6) seeks to enforce their right to housing in which lead hazards have been corrected in accordance with chapter 23-24.6 or chapter 42-128.1, retaliatory conduct as defined at R.I. Gen. Laws § 34-18-46 shall include, but is not limited to, the following actions taken by the landlord and/or the landlord's agent:

- a) Arbitrarily and unreasonably increasing rent: There shall be a presumption that an increase in rent is retaliatory if it is arbitrary and unreasonable. The presumption may be rebutted by a showing that the proposed rent is reasonably related to (1) the cost of lead hazard abatement or mitigation as required by the Lead Hazard Reduction Act or the Lead Hazard Mitigation Act; (2) another cost associated with the operation or maintenance of the rental property that has increased within six months before a landlord has received notice of a complaint or notice of a lead-based paint or lead-based paint hazard; and/or (3) a reasonable rate of return for the property. When a landlord attempts to rebut this presumption by reliance on the cost of lead-hazard abatement or

mitigation, the finder of fact should consider whether the abatement/mitigation has been funded through a publicly-financed grant or loan, which does not require repayment until the sale of the property.

- b) Arbitrarily and unreasonably decreasing services: There shall be a presumption that a decrease in services is retaliatory if it is arbitrary and unreasonable. The presumption may be rebutted by a showing that the proposed decrease in services does not materially changes the terms, conditions, and/or privileges of a written or oral lease, and was not implemented to retaliate against a tenant for a complaint or notice of lead-based paint and/or lead-based paint hazards.
- c) Arbitrarily refusing to renew lease: There shall be a presumption that a refusal to renew a written or oral lease is retaliatory if it is arbitrary and unreasonable. The presumption may be rebutted by a showing that the lease was not renewed for a reason other than to retaliate against a tenant for a complaint or notice of lead-based paint and/or lead-based paint hazards.
- d) Arbitrarily terminating a tenancy or other form of constructive eviction: There shall be a presumption that the termination of a tenancy or other form of constructive eviction is retaliatory if it is arbitrary and unreasonable. The presumption may be rebutted by a showing that the lease, written or oral, was terminated, expressly or constructively, for some reason other than to retaliate against a tenant for a complaint or notice of lead-based paint and/or lead-based paint hazards.

Section 2: Retaliatory conduct by the landlord and/or the landlord's agent shall be "presumed" as that term is defined in R. I. Gen. Laws § 34-18-46(b). "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence. See R.I. Gen. Laws § 34-18-46(b). The presumption exists if the alleged retaliatory act occurs not later than six months after the last notification to the landlord and/or landlord's agent of a complaint, notice of violation, or other such report giving actual notice to the landlord, and/or the landlord's agent, of the presence of lead-based paint, lead-based paint hazards, a lead-poisoned child, or a continuing violation of the Lead Poisoning Prevention Act or Lead Hazard Mitigation Act in the subject premises. The six-month period shall start upon a landlords' most recent receipt of a notice or complaint as those are defined in Sections 5 or 6 of these Guidelines, or any subsequent correspondence indicating continued non-compliance with the notice or complaint.

Section 3: Retaliatory conduct as defined herein is not justified or otherwise authorized by a landlord's failure to receive prior notice of lead-based paint and/or lead-based paint hazards from the previous owner of the property, as required by R.I. Gen. Laws § 23-24.6-16 and/or and 42 U.S.C. § 4852d.

Section 4: Retaliatory conduct as defined herein is prohibited when the presence of lead-based paint is unsuspected and becomes known when the dwelling is already rented to a family with children under the age of six years, to a

family with a woman who is or becomes pregnant, to a family that adopts one or more children under the age of six years, or to a family that receives one or more foster children under the age of six years. Retaliatory conduct is also prohibited when the landlord and/or tenant has notice of lead-based paint or lead-based paint hazards before the tenancy begins.

Section 5: “Complaint,” as that term is used herein, includes but is not limited to:

- a) a request for review of lead-hazard mitigation made by a tenant to the Housing Resources Commission pursuant to R. I. Gen. Laws § 42-128.1-8(d);
- b) private relief sought by a tenant pursuant to R. I. Gen. Laws § 42-128.1-10(1).
- c) a complaint filed with the Department of Health pursuant to R.I. Gen. Laws § 23-24.6-15.

Section 6: “Notice of violation,” as that term is used herein, includes, but is not limited to:

- a) a notice issued by the Department of Health pursuant to R. I. Gen. Laws § 23-24.6-13;
- b) a notice issued by the Housing Resources Commission pursuant to R. I. Gen. Laws § 42-128.1-8;
- c) a notice issued by the Housing Resources Commission pursuant to R. I. Gen. Laws § 42-128.1-11;

- d) a notice issued by a local housing code enforcement officer for violations of the Lead Hazard Mitigation Act and/or the Lead Poisoning Prevention Act as these are incorporated in the Housing Maintenance and Occupancy Code and Minimum Housing Standards;
- e) a notice to abate issued as a result of an environmental lead inspection or assessment pursuant to Rule 2.6 of the Department of Health's Rules and Regulations for Lead Poisoning Prevention, R23-24.6-PB;
- f) any determination of non-compliance with the Lead Hazard Mitigation Act as a result of an inspection conducted pursuant to Part IV of the Housing Resources Commission's Lead Hazard Mitigation Regulations.

The protections of § 34-18-46 shall apply to these notices even if the tenant of a cited dwelling does not make an affirmative complaint to the appropriate governmental agency.

Section 7: "Governmental agency," as used herein, includes any federal, state, or local authority charged with enforcement of law, regulations, codes and/or ordinances related to the reduction or mitigation of lead-based paint hazards, or the notification and disclosure of lead-based paint and/or lead-based paint hazards, including but not limited to those agencies with authority under R. I. Gen. Laws § 42-128.1-1 et seq. ("Lead Hazard Mitigation Act"), § 23-24.6-1 et seq. ("Lead Poisoning Prevention Act"), R. I. Gen. Laws § 45-24.3-1 et seq. ("Housing Maintenance and Occupancy Code"), R. I. Gen. Laws § 45-24.2-1 et seq. ("Minimum

Housing Standards”), and 42 U.S.C. § 4852d et seq. (“Residential Lead-Based Paint Hazard Reduction Act”).

Section 8: Retaliatory conduct as described in these guidelines is prohibited for any tenancy recognized under the Residential Landlord Tenant Act. R.I. Gen. Laws § 34-18 et seq.