



The following are helpful tools to understand the Act and to follow its structure and requirements. In addition to a flow chart illustrating to whom the Act applies and how lessors and sellers must comply with the Act, we have included sample pleadings and a sample notice of intent to sue under TSCA.

Contents

- Flow Chart Illustrating Requirements of the Lead Hazard Disclosure Rule
- Sample Pleadings—Claim for Compensatory Damages Under the Act

Grau v. Ruhl & Ruhl Real Estate Investments, Inc. (S.D. Iowa 2004)
Clark v. Caraway (W.D. Missouri 2001)

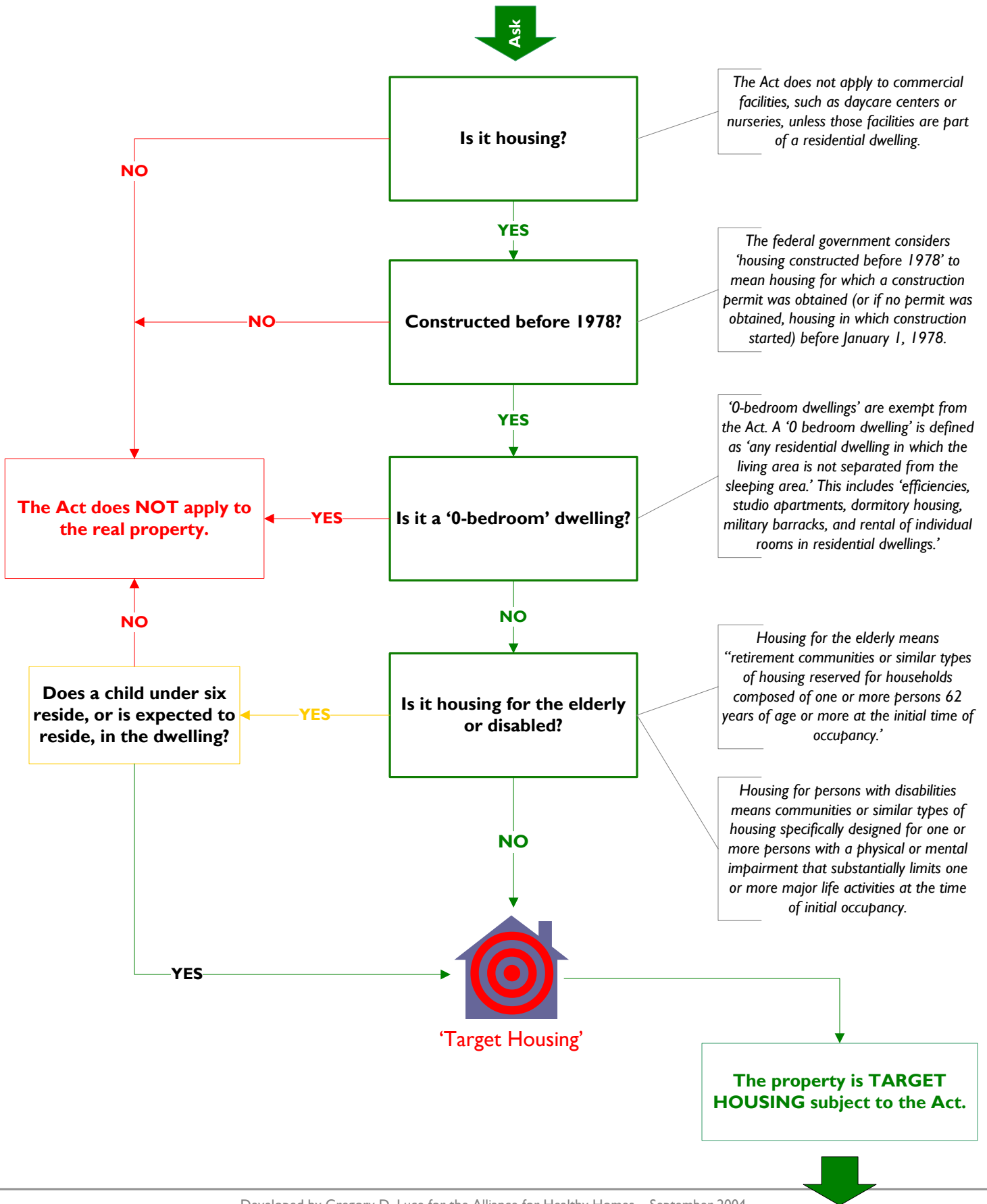
Note: For a sample pleading for injunctive relief through TSCA, contact Anne Phelps, Alliance for Healthy Homes, at aphelps@afhh.org or (202) 543-1147

- Sample Pleading—Counterclaim in Eviction Proceeding
- Sample Notice—Notice of Intent to Sue Under the Act: TSCA Citizen Suit

1

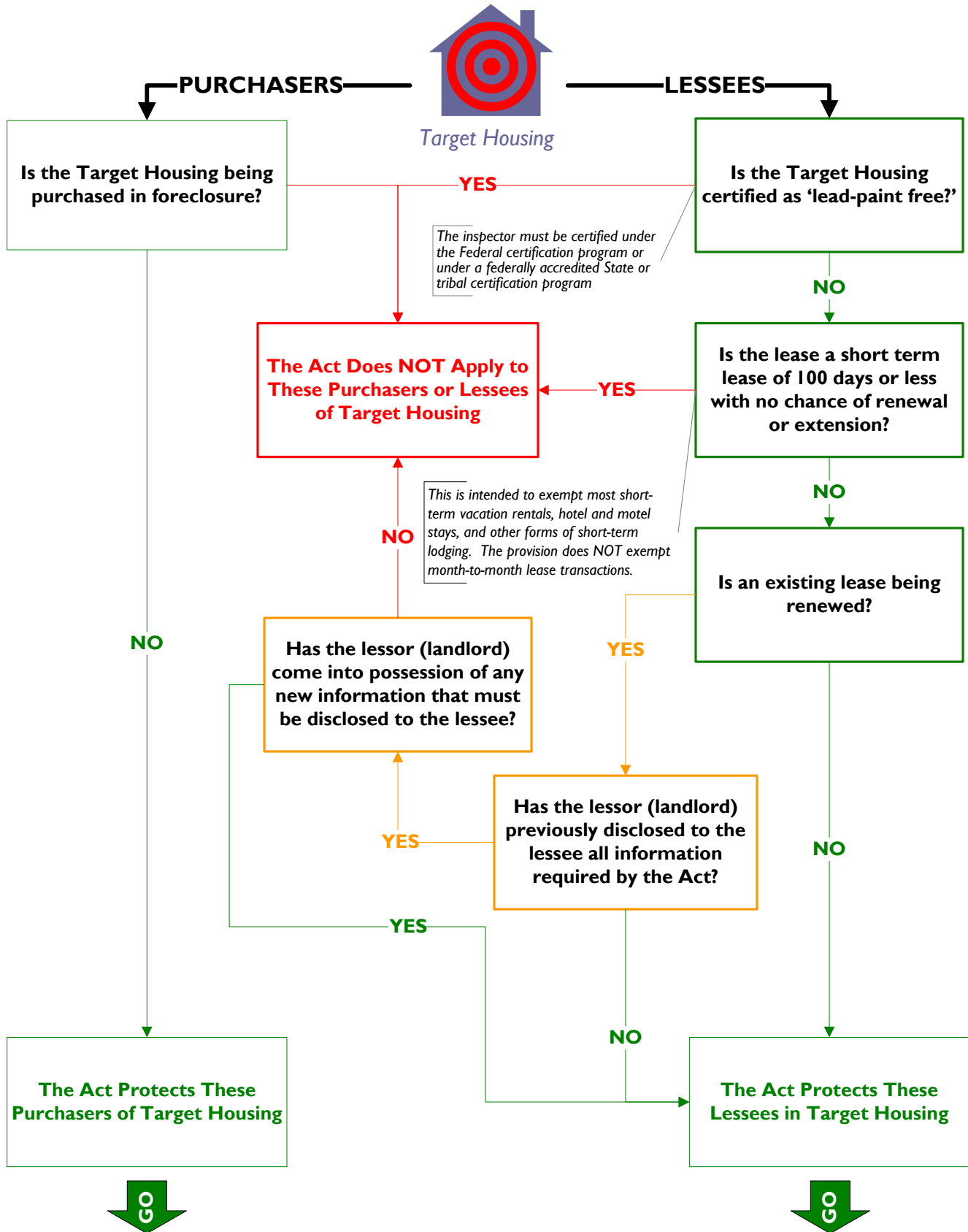
Application of the Residential Lead-Based Paint Hazard Reduction Act of 1992

Answering the Question: What Real Property Is Covered by the Act?



2

Application of the Residential Lead-Based Paint Hazard Reduction Act of 1992 Answering the Question: Who Is Protected by the Act?



Who Is Obligated Under The Act to These Purchasers?

Who Is Obligated Under The Act to These Lessees?

Application of the Residential Lead-Based Paint Hazard Reduction Act of 1992

Answering the Question: What Duties Do Sellers and Lessors Owe to Purchasers and Lessees?

IMPORTANT NOTE: The Duty of Agents is Not Covered in this Chart



DISCLOSURE REQUIREMENTS

LEAD WARNING STATEMENT

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Sellers and lessors must also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces



Signatures of Sellers, Agents and Purchasers Certifying to the Accuracy of Their Statements

Seller must allow 10 days for the Purchaser to conduct a lead risk assessment of the housing. The inspection may be waived if the waiver is in writing. The Purchaser must affirm in writing that he/she had the opportunity for the inspection.

PURCHASERS

Provide a Lead Warning Statement

Disclose the Presence of any Known Lead-Based Paint and/or Lead-Based Paint Hazards, Including Providing Copies of All Reports or Records Concerning the Hazards

State that Seller or Lessor Has Disclosed Information on Known Lead-Based Paint and/or Lead-Based Paint Hazards

Supply an EPA-Approved Lead Hazard Information Pamphlet

Provide a List of any Records or Reports Available Pertaining to LBP and/or LBP Hazards That Have Been Provided to the Purchaser or Lessee

Secure the Statement of Purchaser or Lessee that They Have Received Required Disclosure and the Informational Pamphlet

LEAD WARNING STATEMENT

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

If no hazards are known, the statement must indicate no knowledge of the presence of lead-based paint and/or lead-based paint hazards.



Signatures of Lessors, Agents and Lessees Certifying to the Accuracy of Their Statements

LESSEES



LEGEND

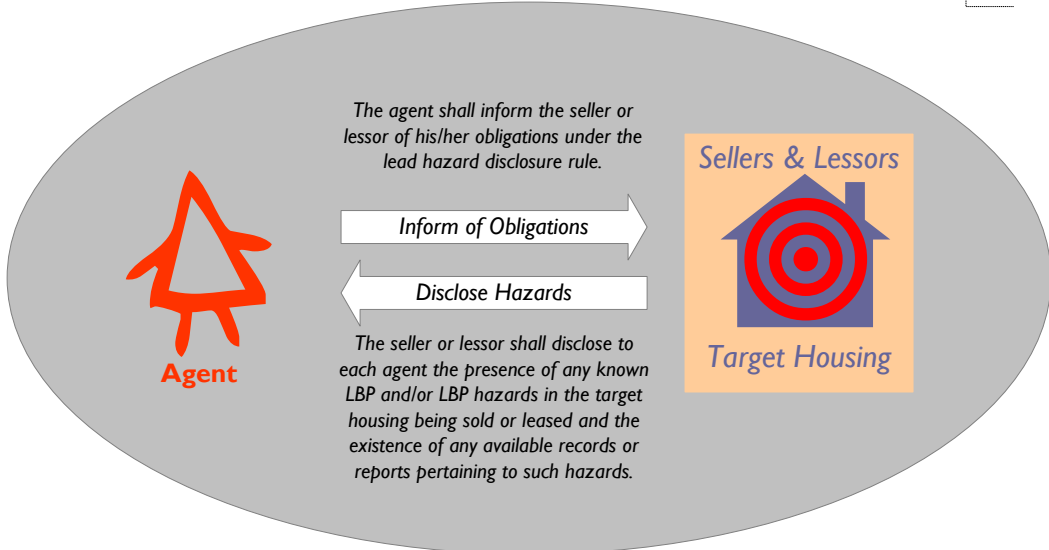
- █ Applicable to Sellers & Lessors
- █ Applicable to Lessors
- █ Applicable to Sellers

4

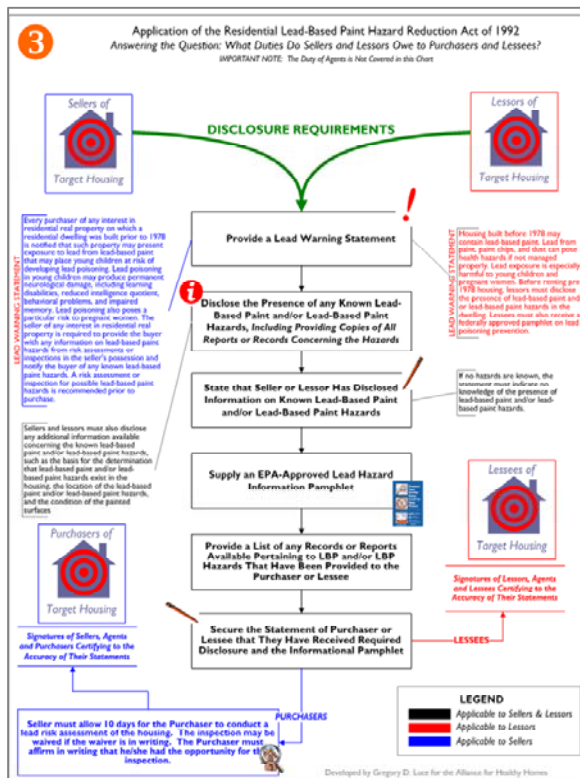
Application of the Residential Lead-Based Paint Hazard Reduction Act of 1992 Answering the Question: What Are the Duties of an Agent Under the Act?

AGENT
Any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

At least two federal courts have held that the Act does NOT apply to buyer's agents, despite the regulations stating otherwise.



Agent must ensure that the seller or lessor has performed all actives required by the lead hazard disclosure rule (see page 3) or personally ensure compliance with the rule.



! If the seller or lessor knows of LBP and/or LBP hazards but does not disclose the information to the agent, then the agent is not liable for any failure to disclose, so long as the agent has complied with the requirement of informing the seller/lessor of the lead hazard disclosure rule obligations.

Any agent involved in a transaction to sell or lease target housing must state that he/she has informed the seller or lessor of the obligations under the Act AND that the agent is aware of his/her duty to assure compliance with the Act.

This Page Is Intentionally Left Blank

FILED
JAN 26 2004
CLERK U.S. DISTRICT COURT
DAVENPORT IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

STEVEN GRAU and MELINDA GRAU,
Individually and as Parents and Natural
Guardians of DEREK HARTMANN,
ABIGAIL GRAU, JEFFREY GRAU and
KATHRYN GRAU, Minors,

Plaintiffs,

vs.

RUHL AND RUHL REAL ESTATE
INVESTMENTS, INC. f/k/a RUHL AND
RUHL REALTORS, INC., KURT E.
MEIER, MARY MAHER, JAN NELSON,
JERRY WINKLER and SUZANNE
WINKLER,

Defendants.

No. _____
3 04 CV 80010
COMPLAINT AND JURY DEMAND

Plaintiffs, Steven and Melinda Grau, individually and as parents and natural guardians of Derek Hartmann, Abigail Grau, Jeffrey Grau and Kathryn Grau, minors, for their cause of action against Defendants Ruhl and Ruhl Real Estate Investments, Inc. f/k/a Ruhl and Ruhl Realtors, Inc. ("Ruhl and Ruhl"), Kurt E. Meier ("Meier"), Mary Maher ("Maher"), Jan Nelson ("Nelson") and Jerry and Suzanne Winkler ("Winklers"), state:

PARTIES

1. Plaintiff Abigail Grau is the natural child of Plaintiff Steven Grau and Stacy Vetter-Grau, who was born on February 18, 1997. Plaintiff Derek Hartmann is the natural child of Plaintiff Melinda Grau and Greg Hartmann, who was born on January 2, 1997. Plaintiffs Jeffrey Grau and Kathryn Grau are the natural children of Plaintiffs Steven and Melinda Grau.

Jeffrey was born on December 13, 2000, and Kathryn was born on August 6, 2002. All Plaintiffs were at all material times residents of DeWitt, Clinton County, Iowa.

2. Defendant Ruhl and Ruhl is a real estate agency and was at all times material a corporation organized under the laws of Iowa with its principal place of business in Davenport, Scott County, Iowa with a local office located in DeWitt, Clinton County, Iowa. Defendant Ruhl and Ruhl's registered agent for service of process is Douglas J. Himmelman, 5403 Victoria Avenue, Suite 100, Davenport, Iowa 52807.

3. Defendants Ruhl and Ruhl and the agents of Ruhl and Ruhl identified below, including Defendant Meier, Defendant Maher and Defendant Nelson are collectively identified as the "Realtor Defendants."

4. Defendant Meier was at all times material a resident of DeWitt, Clinton County, Iowa and was a real estate agent employed by or affiliated with Defendant Ruhl and Ruhl.

5. Defendant Maher was at all times material a resident of DeWitt, Clinton County, Iowa and was a real estate agent employed by or affiliated with Defendant Ruhl and Ruhl.

6. Defendant Nelson was at all times material a resident of DeWitt, Clinton County, Iowa and was a real estate agent employed by or affiliated with Defendant Ruhl and Ruhl.

7. Defendants Jerry and Suzanne Winkler were at all times material residents of Mt. Vernon, Linn County, Iowa. The Winklers were the owners of a house located at 300 9th Street, DeWitt, Iowa 52742 ("property") from 1998 until May 2001 when they sold the house to Plaintiffs Steven and Melinda Grau. The property was built before 1978 and therefore was at risk for the presence of lead based paint.

JURISDICTION AND VENUE

8. Plaintiffs assert claims under The Lead Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d and implementing regulations against all defendants.

9. Jurisdiction of this matter is granted to this Court by 28 U.S.C. § 1331, federal question jurisdiction.

10. Jurisdiction for related state law claims is predicated upon the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367(a).

11. Venue is proper in the Southern District of Iowa, Davenport Division, because the incidents occurred in Clinton County, Iowa.

COMMON ALLEGATIONS

12. In the spring of 2001, Plaintiffs Steven and Melinda Grau employed Defendants Meier and Ruhl and Ruhl to assist them in purchasing a new home.

13. At that time, Defendants Maher, Nelson and Ruhl and Ruhl acted as real estate agents and brokers for Defendants Jerry and Suzanne Winkler.

14. At all material times, The Lead Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d and implementing regulations were in effect and required all of the defendants, before entering into a purchase agreement, to provide Plaintiffs Steven and Melinda Grau with the *Disclosure of Information and Acknowledgment Form for Lead Based Paint and/or Lead Based Paint Hazards* (“Lead Based Paint Disclosure”); to allow the Plaintiffs ten days to have the property inspected or to secure the Plaintiffs’ waiver of such right; to provide the Plaintiffs with a lead hazard information pamphlet (“Lead Based Paint Pamphlet”); and to attach a copy of the Lead Based Paint Disclosure, including acknowledgment by the Plaintiffs that the Defendants

had complied with all of the above requirements, to the purchase agreement, and other requirements as set forth in the Act and regulations.

15. On April 27, 2001, Plaintiffs Steven and Melinda Grau, with the assistance of their realtor, Defendant Meier, made an offer to purchase the property from Defendants Jerry and Suzanne Winkler. At the time this offer was made, the Realtor Defendants did not provide the Plaintiffs with a Lead Based Paint Disclosure or a Lead Based Paint Pamphlet as required by 42 U.S.C. § 4852d.

16. On May 7, 2001, Plaintiffs Steven and Melinda Grau made another offer to purchase the property and at this time the Realtor Defendants provided them with a Lead Based Paint Disclosure and Defendant Meier advised them to sign it. Realtor Defendants and Defendants Jerry and Suzanne Winkler failed to provide the Plaintiffs with a Lead Based Paint Pamphlet; failed to advise the Plaintiffs that they had a 10-day opportunity to have the home inspected for lead paint; failed to explain to the Graus the contents of the Lead Based Paint Disclosure; failed to secure acknowledgment by the Plaintiffs that the Defendants had complied with the above requirements; failed to attach a completed copy of the Lead Based Paint Disclosure to the offer; and failed to provide the Plaintiffs with an executed copy of the Lead Based Paint Disclosure until after they had closed on the property. A copy of the Lead Based Paint Disclosure is attached to this Petition as Exhibit 1.

17. On May 7, 2001, Plaintiffs Steven and Melinda Grau were given a document entitled *Seller Disclosure of Property Condition*, signed by Defendant Jerry Winkler on behalf of himself and Defendant Suzanne Winkler. In this disclosure, Defendant Jerry Winkler checked that there was “no known lead based paint present in the structure,” and did not indicate, where

provided, that the presence of lead based paint in the structure was "unknown." A copy of this disclosure is attached to this Petition as Exhibit 2.

18. On May 10, 2001, Plaintiffs Steven and Melinda Grau made another offer to purchase the property. They signed a second Lead Based Paint Disclosure. Again, they were not advised of nor did they waive their right to have the house inspected for lead based paint hazards, nor did they receive a Lead Based Paint Pamphlet. Also, Plaintiffs Steven and Melinda Grau did not make any of the required acknowledgments on this disclosure and were not given an executed copy of this disclosure until after they had closed on the property. A copy of this disclosure is attached to this Petition as Exhibit 3.

19. On May 10, 2001, Defendants Jerry and Suzanne Winkler made a counter-offer of \$81,500, which was accepted by Plaintiff's Steven and Melinda Grau and the parties entered into an agreement to purchase the property.

20. On May 31, 2001, the parties closed on the sale of the property. As the Plaintiffs were leaving the closing, they were presented with a file containing a copy of their Purchase Agreement, the Seller Disclosure of Property Condition form and the previously-signed Lead Based Paint Disclosure forms.

21. On June 1, 2001, the Grau family moved into the property. Derek Hartmann and Jeffrey Grau resided in this property full time. Abigail Grau resided in the property approximately every other weekend.

22. In the summer of 2001, Plaintiffs Steven and Melinda Grau began to remodel certain areas of the home. This included removing paint from the window sills, doors and trimming.

23. On January 22, 2002, after learning that Plaintiff Abigail Grau had an elevated blood lead level, Plaintiff Melinda Grau took Plaintiffs Derek Hartmann and Jeffrey Grau to their family doctor to have their blood lead level tested. Plaintiff Derek Hartmann was five (5) years old at the time and Plaintiff Jeffrey Grau was one (1) year old at the time.

24. On January 25, 2002, Plaintiff Melinda Grau received a phone call from the Graus' family physician advising her that Jeffrey had an elevated blood lead level of 93 mg/dl and that she needed to take him to the University of Iowa Hospitals and Clinics right away. Plaintiff Melinda Grau was also advised that Plaintiff Derek Hartmann had an elevated blood lead level of 44 mg/dl.

25. On January 25, 2002, Jeffrey Grau was seen at the University of Iowa Hospitals and Clinics. His blood lead level was re-tested intravenously and it was determined that he had a blood lead level of 74 mg/dl. Jeffrey was admitted to the hospital at this time and underwent Chelation Therapy. He stayed in the hospital for six days and was discharged on January 31, 2002.

26. In late January 2002, Plaintiff Melinda Grau, who was now in her first trimester of pregnancy, was found to have an elevated blood lead level of 38 mg/dl. She was advised by hospital physicians to terminate her pregnancy, but decided to carry the child to term.

27. On January 30, 2002, the Visiting Nurses Association conducted a risk assessment at the property and determined that lead hazards existed in the property and that neither children nor Plaintiff Melinda Grau, who was pregnant, should live in the home until the lead hazards were abated.

28. Following the risk assessment, the Plaintiffs moved into the home of Melinda Grau's father, where they are currently residing.

29. On March 7, 2002, Plaintiffs received an estimate of \$152,000 to abate all lead hazards in the property. Plaintiffs later received an estimate of \$135,000 to abate all lead hazards in the property.

30. On August 6, 2002, Plaintiff Kathryn Grau was born to Plaintiff's Steven and Melinda Grau. At the time of birth, Kathryn had an elevated blood lead level of 20 mg/dl.

31. Plaintiffs Abigail Grau and Derek Hartmann were again tested on January 22, 2003. At that time, Abigail had a blood lead level of 6 mg/dl and Derek had a blood lead level of 19 mg/dl.

32. Plaintiffs Melinda and Steven Grau were again tested on April 3, 2003. At that time, Melinda had a blood lead level of 16 mg/dl and Steven had a blood lead level of 32 mg/dl.

33. Plaintiffs Jeffrey and Kathryn Grau were again tested on January 7, 2004. At that time, Jeffrey had a blood lead level of 25.8 mg/dl and Kathryn had a blood lead level of 15.8 mg/dl.

34. As a result of the above-described lead poisoning, Plaintiffs have been forced to move out of their home and Plaintiffs Steven and Melinda Grau have suffered property damages including the loss of the purchase price of their home, loss of use and enjoyment of their home, and the costs associated with maintaining the property from February 2002 until the present, including utilities, taxes and interest on their mortgage.

35. As a result of the lead poisoning, Plaintiffs have suffered and will suffer from physical and cognitive injuries, past and future loss of full function of the mind and body, past

lost earnings, future lost earning capacity, and past and future pain, suffering, emotional distress and loss of enjoyment of life.

36. As a result of the above-described lead poisoning and resulting injuries, Plaintiffs Steven Grau and Melinda Grau, as the parents and natural guardians of Abigail Grau, Derek Hartmann, Jeffrey Grau and Kathryn Grau, have incurred expenses and suffered loss of consortium, including but not limited to, the services, companionship and society of Abigail, Derek, Jeffrey and Kathryn, past and future medical expenses, and past and future lost earnings and income as a result of the necessity of providing care for their children, as well as emotional distress and additional damages as a result of the lead poisoning of their children.

COUNT I
VIOLATION OF 42 U.S.C. 4852d, THE LEAD BASED PAINT
HAZARD REDUCTION ACT AND IMPLEMENTING REGULATIONS
(AGAINST ALL DEFENDANTS)

37. Plaintiffs allege and incorporate by this reference the allegations contained in paragraphs 1-36.

38. The Lead Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, was enacted to ensure that buyers of property were properly notified of lead-based paint hazards before purchasing a property.

39. The Lead Based Paint Hazard Reduction Act and implementing regulations impose upon sellers of property and real estate brokers certain disclosure requirements concerning the presence of lead based paint hazards.

40. Defendants Meier, Maher, Nelson and Ruhl and Ruhl violated 42 U.S.C. § 4852d and 24 C.F.R. 35.94 including but not limited to the following:

- a. Failing to ensure that the Plaintiffs were provided with a Lead Based Paint Pamphlet;
- b. Failing to ensure that the Plaintiffs were permitted a 10 day period to inspect the property for lead based paint hazards before being obligated to purchase the property or in the alternative failing to secure a waiver of the 10 day period from the Plaintiffs;
- c. Failing to advise the Plaintiffs of their rights under 42 U.S.C. § 4852d and thus secure their acknowledgment of their rights on the Lead Based Paint Disclosure; and
- d. Failing to attach a *completed* copy of the Lead Based Paint Disclosure to the Purchase Agreement.

41. Defendants' violations of 42 U.S.C. § 4852d and 24 C.F.R. 35.94 were a proximate cause of Plaintiffs' injuries and damages.

42. Defendants' violations were knowing, entitling Plaintiffs to three times the amount of damages incurred by the Plaintiffs, court costs, reasonable attorney's fees and the costs of retaining experts in connection with this litigation, under § 4852d(b)(3) & (4)

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants in an amount that will fully and fairly compensate them for their injuries, losses and damages, together with three times their actual damages, for attorney's fees, for interest as provided by law, and for the costs of this action.

COUNT II
VIOLATIONS OF IOWA CODE § 543B AND IMPLEMENTING REGULATIONS
(AGAINST REALTOR DEFENDANTS)

43. Plaintiffs re-allege and incorporate by this reference the allegations contained in paragraphs 1-42.

44. Realtor Defendants breached their duties to the Plaintiffs as real estate licensees under Chapter 543B of the Iowa Code and related administrative regulations including but not limited to the following:

- a. Failing to provide brokerage services to the Plaintiffs honestly and in good faith;
- b. Failing to diligently exercise reasonable skill and care in providing brokerage services to the Plaintiffs; and
- c. Failing to fulfill obligations within the scope of the agency agreement, including advising the Plaintiffs of all of their federal rights.

45. Realtor Defendants' violations of Chapter 543B of the Iowa Code and related administrative regulations were a proximate cause of the injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Kurt Meier, Mary Maher, Jan Nelson and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law, and for the costs of this action.

COUNT III
BREACH OF CONTRACT
(AGAINST DEFENDANTS MEIER AND RUHL AND RUHL)

46. Plaintiffs re-allege and incorporate by this reference the allegations set forth in paragraphs 1-45.

47. Plaintiffs Steven and Melinda Grau entered into an agency contract with Defendants Meier and Ruhl and Ruhl in the spring of 2001 for the purpose of Defendants Meier and Ruhl and Ruhl aiding the Plaintiffs in locating and purchasing a new home. Certain provisions of the agency contract are attached to this Petition as Exhibit 4.

48. Defendants Meier and Ruhl and Ruhl breached their agency contract with the Plaintiffs by failing to exercise reasonable skill and care in providing brokerage services to the Plaintiffs; failing to disclose all adverse facts known to Meier and Ruhl and Ruhl; and failing to place the client's interests ahead of the interests of any other party.

49. Defendants Meier and Ruhl and Ruhl's breach of the agency contract was a proximate cause of the injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Kurt Meier and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law, and for the costs of this action.

COUNT IV
NEGLIGENT MISREPRESENTATION
(AGAINST REALTOR DEFENDANTS)

50. Plaintiffs re-allege and incorporate by this reference the allegations contained in paragraphs 1-49.

51. Realtor Defendants knew or should have known that lead paint was present in the house and that there was a possibility of lead paint hazards and had a duty to disclose this information to the Plaintiffs under IOWA CODE § 543B.56.

52. Realtor Defendants failed to adequately disclose the presence of lead based paint to the Plaintiffs.

53. Realtor Defendants knew or should have known that the presence of lead paint in the home would adversely effect the Plaintiff's decision to purchase the home.

54. The Plaintiffs relied on Realtor Defendants' negligent misrepresentation when they purchased the property and moved into the property.

55. Realtor Defendants' negligent misrepresentations were a proximate cause of the injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Kurt Meier, Mary Maher, Jan Nelson and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law, and for the costs of this action.

COUNT V
VIOLATION OF IOWA CODE CHAPTER 558A
(AGAINST DEFENDANTS MAHER, NELSON, RUHL AND RUHL, JERRY WINKLER
AND SUZANNE WINKLER)

56. Plaintiffs re-allege and incorporate by this reference the allegations contained in paragraphs 1-55.

57. Defendants Jerry and Suzanne Winkler and Defendants Maher, Nelson and Ruhl and Ruhl, who were acting as the Winkler's agents, violated IOWA CODE § 558A.3 by failing to make a reasonable effort to ascertain whether or not lead paint was present in their home before preparing a Seller Disclosure of Property Condition and by failing to identify the assertion on the Seller Disclosure of Property Condition that there was no lead based paint in the structure as an "approximation."

58. Defendants Jerry and Suzanne Winkler, Maher, Nelson and Ruhl and Ruhl are liable to the Plaintiffs for violations of IOWA CODE § 558A.3 under IOWA CODE § 558A.6 for the amount of actual damages suffered by the Plaintiffs.

59. Defendants Jerry and Suzanne Winkler, Maher, Nelson and Ruhl and Ruhl's violations of IOWA CODE § 558A were a proximate cause of injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Jerry Winkler and Suzanne Winkler, Mary Maher, Jan Nelson and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law and for the costs of this action.

COUNT VI
BREACH OF FIDUCIARY DUTY
(AGAINST REALTOR DEFENDANTS)

60. Plaintiffs re-allege and incorporate by this reference the allegations contained in paragraphs 1-59.

61. Realtor Defendants violated their common law fiduciary duties including but not limited to the following:

- a. Failing to exercise reasonable skill and care in providing brokerage services to the Plaintiffs;
- b. Failing to promote the interests of the Graus with the utmost good faith, loyalty and fidelity;
- c. Failing to disclose material, adverse facts relating to the transaction; and
- d. Failing to provide copies of executed documents to the Plaintiffs after they had signed them.

62. Realtor Defendants' breach of their fiduciary duties was a proximate cause of the injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Kurt Meier, Mary Maher, Jan Nelson and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law and for the costs of this action.

COUNT VII
FAULT
(AGAINST REALTOR DEFENDANTS)

63. Plaintiffs re-allege and incorporate by this reference the allegations contained in paragraphs 1-62.

64. Realtor Defendants were at fault including but not limited to fault in the following ways:

- a. Failing to exercise reasonable skill and care in providing brokerage services to the Plaintiffs;
- b. Failing to promote the interests of the Graus with the utmost good faith, loyalty and fidelity;
- c. Failing to disclose material, adverse facts relating to the transaction; and
- d. Failing to provide copies of executed documents to the Plaintiffs after they had signed them.

65. Realtor Defendants' breach of their fiduciary duties was a proximate cause of the injuries and damages sustained by Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants Kurt Meier, Mary Maher, Jan Nelson and Ruhl and Ruhl in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law and for the costs of this action.

JURY DEMAND

Pursuant to FED. R. CIV. P. 38(b), Plaintiffs hereby demand a trial by jury of all issues triable to a jury.

Brad Brady ¹³³²

Brad I. Brady LI0000451

Jason S. Zabokrtsky

Jason S. Zabokrtsky LI0017255
BRADY & O'SHEA, P.C.
2735 1st Avenue SE
Cedar Rapids, IA 52402
Phone: 319/866-9277
Fax: 319/866-9280
bbrady@bradyoshea.com
jzabokrtsky@bradyoshea.com
ATTORNEYS FOR PLAINTIFF

Ruhl & Ruhl
REALTORS, INC.

DISCLOSURE OF INFORMATION & ACKNOWLEDGMENT FOR LEAD BASED PAINT AND/OR LEAD BASED PAINT HAZARDS

(Seller must sign prior to signing Listing Agreement. Buyer must sign prior to signing Purchase Agreement)

Lead Warning Statement:

Every Buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that a property may present exposure to lead from lead based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead based paint hazards. A risk assessment or inspection for possible lead based paint hazards is recommended prior to purchase.

Seller's Disclosure (Initial):

- JRM A. Presence of lead based paint and/or lead based paint hazards (check one below):
 Known lead based paint and/or lead based paint hazards are present in the housing (explain):

 Seller has no knowledge of lead based paint and/or lead based paint hazards in housing.
JRM B. Records and Reports available to the Seller (check one below):
 Seller has provided the Buyer with all available records and reports pertaining to lead based paint and/or lead based paint hazards in the housing (list documents below):

 Seller has no reports or records pertaining to lead based paint and/or lead based paint hazards in the housing.

Buyer's Acknowledgment (Initial):

- _____

C. Buyer has received copies of all information listed above.
D. Buyer has received the pamphlet Protect Your Family From Lead in Your Home.
E. Buyer has (check one below):
 Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection of the presence of lead based paint or lead based paint hazards
OR
 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead based paint and/or lead based paint hazards.

Agent's Acknowledgment (Initial):

- JRM F. Agent has informed the Seller of the Seller's obligations under 42 U.S.C. 4852 d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy:

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they provided is true and accurate.

Seller: Janet D. Nelson

Date: 3/12/01

X Seller: Suzanne E. Winkler

Date: 3-12-01

Agent: Mary Maher / Jan Nelson

Buyer: [Signature]

Date: 5/7/01

Buyer: _____

Date: _____

Agent: [Signature]

5/7/01

Ruhl & Ruhl
REALTORS, INC.

**SELLER DISCLOSURE
OF PROPERTY CONDITION - IOWA**

PROPERTY ADDRESS: 300-9th St Deloitte IA
Is this New Construction? Yes No If yes, home completion date: _____

PURPOSE: Use this statement to disclose information as required by Iowa code chapter 558A. This law requires certain sellers of residential property that includes at least one and no more than four dwelling units to disclose information about the property to be sold. The following disclosures are made by the Seller(s) and not by any agent acting on behalf of the Seller(s).

AGENT'S DISCLAIMER: This statement is not a warranty of any kind by any real estate agent representing any party in this transaction. The Seller(s)' real estate agent has no independent knowledge of the condition of the property. In no event shall the real estate agents be liable for the information contained in this Disclosure Statement.

PURCHASER(S)' DUE DILIGENCE: This Disclosure Statement is not a substitute for Buyer(s)' own due diligence, including any inspections or warranties the Buyer(s) may wish to obtain. The real estate agents involved in this transaction recommend that Buyer(s) obtain independent inspections of the various major components of the property, including, but not limited to, roof, the basement for dryness, and the heating and air conditioning, plumbing and electrical systems.

NOTICE AND INSTRUCTIONS TO THE SELLER(S):

1. Seller(s) must complete this Disclosure Statement. Seller(s)' real estate agent cannot complete this form for Seller(s). Respond to all questions, or attach reports allowed by Iowa Code section 558A.4(2), such as professional inspections of furnace, roof, air conditioning, etc.
2. Disclose all known conditions materially affecting this property.
3. If an item does not apply to this property, indicate it is not applicable (N/A).
4. Disclose information in good faith and make a reasonable effort to ascertain the required information. If the required information is unknown or is unavailable following a reasonable effort, use an approximation of the information, or indicate that the information is unknown (UNK). All approximations must be identified as approximations (AP).
5. Additional pages may be attached as needed.
6. Keep a copy of this statement with your other important papers.

DISCLOSURES REGARDING APPLIANCES/COMPONENTS: Check all items that are included with your property; if some items do not apply, write "N/A" - not applicable.

	CHECK ITEMS THAT APPLY	WORKING? (CIRCLE ONE)		CHECK ITEMS THAT APPLY	WORKING? (CIRCLE ONE)		CHECK ITEMS THAT APPLY	WORKING? (CIRCLE ONE)
Range/Oven	<input checked="" type="checkbox"/>	<input checked="" type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Alarm system	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Garage door opener & remote control	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Hood/Fan	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Intercom	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Propane & chimney	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Dishwasher	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Airic Ra	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Furnace humidifier	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Refrigerator	<input checked="" type="checkbox"/>	<input checked="" type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Pool heater, well liner & equipment	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Electrical air filter	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Microwave	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Water softener/conditioner	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Leak sprinkler system	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Trash Compactor	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Sump Pump	<input checked="" type="checkbox"/>	<input checked="" type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Colling fans	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
Disposal	<input checked="" type="checkbox"/>	<input checked="" type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Window air conditioner(s)	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK	Sensahat int	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK
						Other	<input type="checkbox"/>	<input type="radio"/> Yes/ <input type="radio"/> No/ <input type="radio"/> UNK

1) Exceptions/Explanations of the "No" responses above, if any: _____

2) List fixtures, window treatments, appliances, etc., excluded from sale: _____

ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED AND ARE NOT UNDER WARRANTY BEYOND DATE OF CLOSING.

ADDITIONAL DISCLOSURES:

- Circle response: Yes No N/A UNK
1. Basement/Foundation: Any known water or other problems? Yes No N/A UNK
If yes, explain frequency and extent of problem and cause, if known: Spring time/heavy rain water runs to drain
Any known repairs: _____ Yes No N/A UNK
If yes, date of repairs/replacement: _____
 2. Roof: Any known problems? Yes No N/A UNK
Any known repairs? Yes No N/A UNK
If yes, date of repairs/replacement: _____
Approximate age of roof, if known: Mid 1980s Yes No N/A UNK
 3. Well and Pump: Any known problems? Yes No N/A UNK
If yes, date of repairs/replacement: _____
Any known water tests? _____ Yes No N/A UNK
If yes, date of last report: _____
And results: _____
Type of well (depth/diameter) and age, if known: _____
Is well community owned? _____ Yes No N/A UNK
If yes, what is fee? _____
 4. Septic Tanks/Drain Fields: Any known problems? Yes No N/A UNK
Location of Tank: _____
Age: _____ Date tank last cleaned: _____

5. Sewer System: Any known problems? Yes No N/A UNK
 Any known repairs? No N/A UNK
 If yes, date of repairs/replacement: New Main Line in 1997
6. Heating System(s): Any known problems? Yes No N/A UNK
 Any known repairs? Yes No N/A UNK
 If yes, date of repairs/replacement: 1998 Approximate age? 2 1/2 yrs
7. Central Cooling System(s): Any known problems? Yes No N/A UNK
 Any known repairs? Yes No N/A UNK
 If yes, date of repairs/replacement: 1998 Approximate age? 2 1/2 yrs
8. Plumbing System(s): Any known problems? Yes No N/A UNK
 Any known repairs? No N/A UNK
 If yes, date of repairs/replacement: 1997 New tub drain
 Type: copper galvanized other _____
9. Electrical System(s): Any known problems? Yes No N/A UNK
 Any known repairs? Yes No N/A UNK
 If yes, date of repairs/replacement: _____
10. Pest Infestation (e.g., termites, carpenter ants): Any known problems? Yes No N/A UNK
 If yes, date(s) of treatment: _____
 Any known structural damage? Yes No N/A UNK
 If yes, date of repairs/replacement: _____
 Any known inspections? Yes No N/A UNK
 If yes, date of last report: _____
 And results: _____
 Any unrepaired damage? Yes No N/A UNK
11. Asbestos: Any known to be present in the structure? Yes No N/A UNK
 If yes, explain: _____
 If asbestos has been removed, explain where previously located and when removed: _____
12. Radon: Any known test for the presence of radon gas? Yes No N/A UNK
 If yes, date of last report: _____
 And results: _____
13. Lead-Based Paint: Any known lead based paint present in the structure? Yes No N/A UNK
 Was property built prior to 1978? No N/A UNK
14. Flood Plain: Is the property located in a flood plain? Yes No N/A UNK
 If yes, what is the flood plain designation? _____
 Is flood insurance required? Yes No N/A UNK
15. Zoning: Do you know the zoning classification of the property? No N/A UNK
 If yes, what is the zoning classification: R
 Any known zoning violations or non-conforming uses? Yes No N/A UNK
16. Shared or Co-Owned Features: Any features of the property known to be shared in common with adjoining landowners, such as walls, fences, roads, and driveways, whose use or maintenance responsibility may have an effect on the property? Yes No N/A UNK
 Any known encroachments or easements? Yes No N/A UNK
 Any known "common areas" such as pools, tennis courts, walkways, or other areas co-owned with others, or a Homeowner's Association which has any authority over the property? Yes No N/A UNK
17. Physical Problems: Any known settling, flooding, drainage or grading problems? Yes No N/A UNK
18. Structural Damage: Any known structural damage? Yes No N/A UNK
19. Insulation:
 Attic: Type UNK Amount _____
 Sidewalls: Type None Amount _____
20. Is the property located in a real estate improvement district? Yes No N/A UNK
 If yes, indicate the amount of any special assessment against the property: \$ _____

You must explain any "YES" response(s) above. Use additional sheets as necessary. If reports are attached, identify the reports and the questions to which they pertain.

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s). The Seller(s) has owned the property since 1998. The Seller(s) certifies that, as of the date signed, this information is true and accurate to the best of my/our knowledge. New Home Completion Date: _____

Seller Jimmy D. Walker Seller X
 Date 3/2/01 Date _____

BUYER(S) ACKNOWLEDGMENT:

Buyer(s) acknowledge receipt of a copy of this Disclosure Statement prior to Buyer(s)' signing an offer to purchase subject property. This Disclosure Statement is not intended to be a warranty or to substitute for any inspection the Buyer(s) may wish to obtain.

Buyer _____ Buyer _____

Ruhl & Ruhl
REALTORS, INC.

DISCLOSURE OF INFORMATION & ACKNOWLEDGMENT FOR LEAD BASED PAINT AND/OR LEAD BASED PAINT HAZARDS

(Seller must sign prior to signing Listing Agreement. Buyer must sign prior to signing Purchase Agreement)

Lead Warning Statement:

Every Buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that property may present exposure to lead from lead based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead based paint hazards and risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead based paint hazards. An assessment or inspection for possible lead based paint hazards is recommended prior to purchase.

Seller's Disclosure (Initial):

- JSM
- A. Presence of lead based paint and/or lead based paint hazards (check one below):
 Known lead based paint and/or lead based paint hazards are present in the housing (explain):

 - B. Seller has no knowledge of lead based paint and/or lead based paint hazards in housing.

 - JSM
 - B. Records and Reports available to the Seller (check one below):
 Seller has provided the Buyer with all available records and reports pertaining to lead based paint and/or lead based paint hazards in the housing (list documents below):

 - C. Seller has no reports or records pertaining to lead based paint and/or lead based paint hazards in the housing.

Buyer's Acknowledgment (Initial):

- C. Buyer has received copies of all information listed above.
- D. Buyer has received the pamphlet Protect Your Family From Lead in Your Home.
- E. Buyer has (check one below):
 Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection of the presence of lead based paint or lead based paint hazards OR
 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead based paint and/or lead based paint hazards.

Agent's Acknowledgment (Initial):

- JM, mm F. Agent has informed the Seller of the Seller's obligations under 42 U.S.C. 4852 d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy:

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they provided is true and accurate.

Seller: James D. Wilson

Date: 3/12/01

X Seller: Suzanne E. Winkler

Date: 3-12-01

Agent: Maury Maher / Jan Nelson

Buyer: [Signature]

Date: 5/10/01

Buyer: Melinda Gray

Date: 5/10/01

Agent: [Signature]

**Ruhl
&Ruhl**
REALTORS, INC.

IOWA - AGENCY DISCLOSURE NOTICE TO NON-CLIENT SELLER

(Seller must sign before signing offer if Appointed Agent is representing Buyer exclusively. May present before showing property.)

TO: Seller(s) Signing Below.

FROM:

Kurt Meier, as Appointed Agent, for STEVE GRAU

and Melinda Grau, who are the Buyer Client(s).

Concerning Property Located at: 300 9th St DeWitt, IA 52742

The Appointed Agent named above is a real estate sales associate affiliated with Ruhl & Ruhl. When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand who the real estate agent is representing in the transaction. More importantly, you should understand how that agency relationship impacts your relationship with the real estate agent. All agents have the following duties:

DUTIES TO ALL PARTIES

A real estate agent, including the Appointed Agent, has the following duties to all parties to a transaction, regardless of which party the agent represents:

1. To provide real estate brokerage services to all parties to the transaction honestly and in good faith;
2. To diligently exercise reasonable skill and care in providing brokerage services to all parties;
3. To disclose to each party all material adverse facts that the agent knows, except for the following:
 - Material adverse facts known by the party.
 - Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.
 - Material adverse facts the disclosure of which is prohibited by law.
 - Material adverse facts that are known to a person who conducts an inspection on behalf of a party.

NOTE: A "material adverse fact" means an adverse fact that a party indicated is of such significance, or that is generally recognized by a real estate agent as being of such significance to a reasonable party, that it affects or would affect a party's decision to enter into a contract or agreement concerning a transaction, or affects or would affect a party's decision as to the terms of a contract or agreement.

4. To account for all property coming into the possession of the agent that belongs to any party within a reasonable time of receiving the property.

DUTIES TO A CLIENT

In addition to the real estate agent's duties to all parties as provided above, a real estate agent, including the Appointed Agent, has the following duties to the agent's client(s):

1. To place the client's interests ahead of the interests of any other party, unless the agent is acting as a disclosed dual agent.
2. To disclose to the client all information known by the agent that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.
3. To fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the agent has under the law.
4. To disclose to the client any financial interests the agent or the brokerage has in any business entity to which the agent or brokerage refers a client for any service or product related to a transaction.

Disclosure by Appointed Agent

It is understood and agreed that when Appointed Agent is the Buyer's Agent on a property, but not the Listing Agent, Appointed Agent will represent the Buyer(s) exclusively.

The undersigned Seller(s) understand(s) that Appointed Agent is representing the Buyer(s) and not the Seller(s). Seller(s) is not a client of Appointed Agent.

X Seller: Judy B. Meier
Y Seller: Suzanne Winkler

Date: 5/4 01
Date: 5-4-01

3 04CV80010

JS-44 - IOWA

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Steven Grau and Melinda Grau, Individually and as Parents and Natural Guardians of Derek Hartmann, Abigail Grau, Jeffrey Grau and Kathryn Grau, Minors
(b) County of Residence of First Listed Plaintiff Clinton
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
Ruhl and Ruhl Investments, Inc. f/k/a Ruhl and Ruhl Realtors, Inc., Kurt E. Meier, Mary Maher, Jan Nelson, Jerry Winkler and Suzanne Winkler
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Brady & O'Shea, P.C.
2735 1st Avenue SE, Ste. 205,
Cedar Rapids, Iowa 52402; (319)
866-9277

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- U.S. Government Plaintiff
Federal Question (U.S. Government Not a Party)
U.S. Government Defendant
Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Incorporated or Principal Place of Business in This State
Citizen of Another State
Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- Original Proceeding
Removed from State Court
Remanded from Appellate Court
Reinstated or Reopened
Transferred from another district (specify)
Multidistrict Litigation
Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violation of 42 U.S.C. 4852d, The Lead Based Paint Hazard Reduction Act and Implementing Regulation.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See INSTRUCTIONS and LR 3.1(e)) JUDGE DOCKET NUMBER

DATE 1-26-04 SIGNATURE OF ATTORNEY OF RECORD [Signature] /S/ <your name here>

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED 1/26/2004 4:06:43 PM, USDC, Southern District of Iowa

JURISDICTION AND VENUE

4. This action arises out of the acts and omissions leading up to the lead poisoning of, and resulting injury to, plaintiff Shelby Clark.
5. The acts and omissions giving rise to this lawsuit occurred within the Western District of Missouri at plaintiffs' former residence, 3927 Central, Kansas City, Missouri. Jackson County 64111.
6. This action is brought pursuant to 42 U.S.C. § 4852d(b)(3)(4) and (5) of the "Residential Lead-Based Paint Hazard Reduction Act of 1992"; and 40 C.F.R. §§ 745.100 *et seq.*
7. Jurisdiction and venue are proper pursuant to 42 U.S.C. § 4852d(b)(3)(4) and (5); 40 C.F.R. § 745.118(c)(d)(e) and (f); federal question jurisdiction pursuant to 28 U.S.C § 1331, and supplemental jurisdiction pursuant to 28 U.S.C § 1367.

ALLEGATIONS COMMON TO ALL COUNTS

8. Plaintiff Brandi York is the natural mother of plaintiff Shelby Clark, a minor female child born on April 30, 2000.
9. At all times pertinent, defendants Vicki Caraway and William Roy Caraway were the owners of a rental property located at 3927 Central, Kansas City, Missouri 64111.
10. On or about June 15, 2001, plaintiff Brandi York contacted defendant Vicki Caraway concerning the rental property owned by defendant at 3927 Central, Kansas City, Missouri.

11. Plaintiff York and defendant entered into a lease agreement concerning the property owned by defendants at 3927 Central, Kansas City, Missouri, and plaintiff agreed to rent the premises from defendants beginning in July 1, 2001.
12. Plaintiffs York and Clark took occupancy of the defendant's rental property at 3927 Central, Kansas City, Missouri on July 1, 2001.
13. In the summer and fall of 2001, after plaintiff York noticed a change in the behavior of her daughter, plaintiff Shelby Clark.
14. In response to plaintiff Shelby Clark's abnormal behavior, plaintiff York sought medical attention for her daughter, plaintiff Shelby Clark, in August of 2001.
15. After examination of plaintiff Shelby Clark by her treating physicians it was eventually determined in August of 2001 that Shelby Clark had toxic levels of lead in her system from the leased premises at 3927 Central, Kansas City, Missouri. Plaintiff Brandi York was forced to move out of the home owned by defendants upon learning of the lead poisoning of Shelby Clark.
16. As a result of plaintiff Shelby Clark's lead poisoning, Shelby has suffered severe and permanent injuries.

COUNT I, Violation of the Residential Lead-Based Paint Hazard Reduction Act of 1992, plaintiff Shelby Clark.

17. At the time plaintiffs entered into their lease with defendants on July 1, 2001, the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107 were in full force and effect.

18. At all times pertinent, plaintiff Shelby Clark was a *lessee* as defined in 40 C.F.R. § 745.103.

19. At all times pertinent, defendants Vicki Caraway and William Roy Caraway were the *lessors* of a *residential dwelling* as both terms are defined in 40 C.F.R. § 745.103.

20. The property leased by defendants to plaintiff Shelby Clark was *target housing* as defined in 40 U.S.C. 745.100 et seq.

21. At no time during the tenancy of plaintiffs did defendants Vicki Caraway or William Roy Caraway make any of the proper disclosures under 40 C.F.R. § 745.107 concerning the possible presence of lead-based paint in the residential dwelling leased by plaintiffs.

22. At no time during the tenancy of plaintiffs did defendants Caraway make any disclosures whatsoever concerning the possibility of the presence of lead-based paint in the residential dwelling leased by plaintiffs.

23. At all times pertinent, defendants Caraway knew or should have known of the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107.

24. At all times pertinent, defendants Caraway knew or should have known of the presence of lead-based paint in the residential dwelling leased by plaintiffs.

24. Defendants Vicki Caraway and William Roy Caraway knowingly and deliberately violated the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107.

25. As a direct and proximate result of the defendants Caraways' failure to disclose the presence of lead-based in plaintiffs' residential dwelling, plaintiff Shelby Clark suffered damages.

WHEREFORE, plaintiff Shelby Clark prays for judgment against defendants Vicki Caraway and William Roy Caraway for 1); three (3) times the amount of actual damages incurred by Shelby Clark pursuant to 42 U.S.C. 4852d(b)(3) and 40 C.F.R. 745.118(c), including, but not limited to, medical bills, out of pocket expenses and emotional distress; and 2); costs of this action, together with reasonable attorney fees and any expert witness fees pursuant to 42 U.S.C. 4852d(b)(4) and 40 C.F.R. 745.118(d);

COUNT II, Violation of the Residential Lead-Based Paint Hazard Reduction Act of 1992, plaintiff Brandi York.

Plaintiffs incorporate by reference each and every allegation contained above, and further state and allege as follows:

26. At the time plaintiffs entered into their lease with defendants on July 1, 2001, the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107 were in full force and effect.

27. At all times pertinent, defendants Vicki Caraway and William Roy Caraway were the *lessors* of a *residential dwelling* as both terms are defined in 40 C.F.R. § 745.103.
28. At all times pertinent, plaintiff Brandi York was a lessee defined in 40 C.F.R. § 745.103.
29. The property leased by defendant to plaintiff Brandi York was *target housing* as defined in 40 U.S.C. 745.100 et seq.
30. At no time during the tenancy of plaintiffs did defendant Vicki Caraway or defendant William Roy Caraway make any of the disclosures required by federal law concerning the possible presence of lead-based paint in the residential dwelling leased by plaintiffs.
32. At no time during the tenancy of plaintiffs did defendant Vicki Caraway or defendant William Roy Caraway make any disclosures whatsoever concerning the possibility of the presence of lead-based paint in the residential dwelling leased by plaintiffs.
33. At all times pertinent, defendants Caraway knew or should have known of the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107.
34. At all times pertinent, defendants Vicki Caraway and William Roy Caraway knew or should have known of the presence of lead-based paint in the residential dwelling leased by plaintiffs.

35. Defendants Vicki Caraway and William Roy Caraway knowingly and deliberately violated the disclosure requirements of 42 U.S.C. § 4852d(a) and 40 C.F.R § 745.107.

36. As a direct and proximate result of defendants Caraways' failure to disclose the presence of lead-based in plaintiffs' residential dwelling, plaintiff Brandi York was forced to incur out of pocket expenses for medical treatment and moving.

37. As a direct and proximate result of defendants Vicki Caraways' failure to disclose the presence of lead-based in plaintiffs' residential dwelling, plaintiff Brandi York suffered severe emotional distress.

WHEREFORE, plaintiff Brandi York prays for judgment against defendant Vicki Caraway and William Roy Caraway for 1); three (3) times the amount of damages incurred by Brandi York pursuant to 42 U.S.C. 4852d(b)(3) and 40 C.F.R. 745.118(c); 2) including, but not limited to, medical bills, out of pocket expenses and emotional distress; and 2) costs of this action, together with reasonable attorney fees and any expert witness fees pursuant to 42 U.S.C. 4852d(b)(4) and 40 C.F.R. 745.118(d);

Respectfully Submitted By,

ss/David Bryan
David M. Bryan, #45688
1621 Baltimore Avenue
Kansas City, MO 64108
(816) 221-7765 telephone
(816) 221-8503 fax
ATTORNEY FOR PLAINTIFFS

REQUEST FOR JURY TRIAL

COME NOW plaintiffs and request that all issues in the above-entitled cause be tried by jury.

By, SS/ David Bryan
David M. Bryan

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing document was mailed via certified mail to the following:

Ms. Vicki Caraway
Mr. William Roy Caraway
15406 Cross Creek Drive
Shasta, CA 96087

By, _____
David M. Bryan

Tom Neltner of Indiana-based Improving Kids' Environment (IKE) provided the following copy of an Amended Answer, Affirmative Defenses, and Counterclaims. The pleading is based on an original pleading used in an eviction proceeding in state court. For more information on the case, contact Tom Neltner at neltner@ikecoalition.org or by phone at (317) 442-3973.

STATE OF INDIANA) IN THE _____ SUPERIOR COURT
)ss:
COUNTY OF _____) CAUSE NO. _____

Jack Landlord,)
)
Plaintiff,)
)
v.)
)
John Tenant and)
Mary Tenant,)
)
Defendants.)

AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Come now Defendants, John Tenant and Mary Tenant, by counsel, and for their Amended Answer, Affirmative Defenses, and Counterclaims, state as follows:

ANSWER

With respect to the allegations set forth in the respective paragraphs of the Complaint filed by Plaintiff, Jack Landlord, Defendants answer as follows:

1. Defendants admit the allegations in paragraph one (1).
2. Defendants admit the allegations in paragraph two (2).
3. Defendants admit the allegations in paragraph three (3).
4. Defendants admit that the allegations in paragraph four (4) were contained in the subject lease agreement.
5. Defendants admit that they did not make certain monthly payments to plaintiff pursuant to the subject lease agreements. Defendants deny the remaining allegations in

paragraph five (5).

6. Defendants deny the allegations in paragraph six (6).

7. Defendants deny the allegations in paragraph seven (7).

8. Defendants deny the allegations in paragraph eight (8). In further response,

Defendants state that the allegations in paragraph eight (8) are moot due to the fact that

Defendants have vacated the real estate and have relinquished possession of the real estate to

Plaintiff.

AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

FACTUAL ALLEGATIONS:

The Defendants, for their affirmative defenses and counterclaims against the Plaintiff, allege as follows:

1. Defendants, John and Mary Tenant ("Tenants"), are the parents of three children, Daisy (age 2), Marie (age 6), and Jon (age 11). Tenants presently reside at 1000 Smith Road, Anyville, IN 47101.

2. On or about September 15, 2001, Tenants signed a Residential Lease-Rental Agreement and Deposit Receipt with Plaintiff, Jack Landlord ("Landlord"), for the property located at 222 Main Street, Anyville, IN 47101 (hereinafter, "the subject premises"). A copy of said Agreement is attached hereto as Exhibit A.

3. On or about said date, Tenants paid Landlord a \$400.00 security deposit.

4. Landlord is, and at all relevant times was, the owner of the subject premises, and was the landlord in the subject transaction.

5. Landlord is, and at all relevant times was a licensed realtor and real estate broker.

6. The subject premises was built before 1978.

7. Landlord did not provide Tenants with an EPA-approved lead hazard information pamphlet.

8. Landlord did not include a lead warning statement as part of the contract with Tenants.

9. Landlord did not include a statement disclosing the presence of any known lead - based paint and/or hazards, whether he had any knowledge of such, or any additional known lead information about the property as part of the contract with the Tenants.

10. Landlord did not include a list of records or reports pertaining to lead-based paint and/or hazards, or if he had no such records or reports, as part of the contract with the Tenants.

11. Landlord did not include a statement by the Tenants affirming receipt of the lead information as part of the contract with them.

12. On or about August 2, 2002, the Tenants' baby, Daisy, was given a blood lead level test, which revealed an elevated blood lead level of 11ug/dl, a copy of which is attached as Exhibit B.

13. The subject premises has, and at all relevant times had, lead paint in it.

14. The lease agreement (Exhibit A) specifically provided, under "Additional Terms and Conditions," that Landlord would furnish paint and Tenants would paint at no cost to Landlord.

15. Landlord did not provide Tenants with any information about how to minimize the health risk of lead on the property.

16. Landlord did not do anything to the property to minimize the health risks of lead to the Tenants while they occupied the premises.

17. On or about November 2, 2002, Tenants notified Landlord by letter of their intent to move from the subject premises, due to the presence of lead on the premises and their daughter's elevated blood lead level, a copy of which letter is attached hereto as Exhibit C.

18. The lease provided (§ 18) for a three day written notice of default and an opportunity to cure if the tenant fails to pay rent when due.

19. Landlord failed to give Tenants a three day written notice of default or an opportunity to cure.

20. The lease provided (§18) that either party may terminate the lease on thirty day written notice.

21. Tenants gave Landlord a thirty day written notice in their letter of November 2, 2002.

22. Landlord failed to give Tenants a thirty day written notice of termination.

23. Following Tenants' letter of November 2, 2002, Landlord caused a lawsuit to be filed against Tenants for possession of the premises, on November 15, 2002.

24. The lease provides (§18) that a statement showing any charges made against the security deposit will be provided within two weeks from the date possession is delivered to owner.

25. Tenants provided a forwarding address to Landlord, contained in their pro-se Answer filed in this cause and served on Landlord on or about December 8, 2002.

26. Landlord has failed to provide a properly itemized statement of deductions from the security deposit to Tenants, or to refund the damage deposit to Tenants.

27. Landlord had a duty to disclose the possibility and presence of lead paint in the

house, and to warn the Tenants of the risks associated with lead paint exposure.

28. Landlord knew, or should have known of the presence of lead paint in the subject premises.

29. The lease provides (¶10) for the tenant's acknowledgment that the premises are in good order and repair.

30. Tenants were unaware of the presence of lead paint in the subject premises, and relied on Landlord, a professional landlord, real estate agent and broker, to ensure that the subject premises were in good order and repair as represented by Landlord.

31. Upon discovery of Daisy's elevated blood level, Tenants took all reasonable steps to educate themselves and minimize the exposure to their infant child and other family members, while they remained in the subject premises; such steps included washing down the woodwork, limiting the children's contacts with the floor, and frequently washing their hands, among other things.

32. Tenants confirmed the presence of lead paint on the premises through testing, a copy of which is attached hereto as Exhibit D.

33. Landlord, as a licenced real estate agent and/or broker, and residential landlord, knew, or in the performance of his duties should have known, of the existence of applicable federal laws governing existence and disclosure of lead-based paint and lead-based paint hazards in his rental dwellings, and the obligation to provide reports containing that information to all present and future tenants, including the Tenants.

34. The lease provided (¶12) that if the premises were rendered untenantable from any cause, either party had the right to terminate the lease. The lease further provided that

Landlord, as owner, would be liable for any damage or injury to tenants, occurring on the premises, if such damage was the proximate result of the negligence or unlawful act of Landlord, his agents, or his employees.

35. Prior to the date of the execution of the Lease, Landlord knew or should have known that the premises subject to the Lease was not fit, safe or in habitable condition, and was contaminated with lead, which posed a severe threat to the Tenants' minor children.

36. The lease provision, which required Tenants to paint the premises, and the fact that paint was peeling off at the time the premises were rented, increased the risk to the tenants of exposure to lead.

37. At all relevant times, Landlord knew or should have known that the premises was not fit, safe or in habitable condition, and was contaminated with lead, which posed a severe threat to the Tenants, particularly the children.

38. Landlord had a continuing duty arising out of the relationship between Landlord and the Tenants as lessors of the residential real property, to disclose the above-described defects in the property both prior to the date of the Lease and subsequent to the execution thereof.

39. But for Landlord's failure to disclose the above-described hazards, Tenants would not have signed the lease.

40. The exposure to and inhalation, ingestion or absorption of lead dust and particulates emanating from the premises subject to the above-described Lease by the Tenants' minor children was completely foreseeable and could or should have been anticipated by Landlord.

41. The premises were rendered untenable, as the direct and proximate result of

one or more of the foregoing acts or omissions on the part of Landlord, namely his failure to disclose the lead contamination of which he was aware, or should have been aware.

42. Landlord's failure to provide the required disclosures to Tenants, coupled with the representation that the subject premises were in good order and repair, deprived Tenants of the opportunity to take reasonable precautions to limit the exposure of their family to lead.

43. Landlord's failure to disclose such information about the presence of lead deprived Tenants of the beneficial use and enjoyment of the premises and rendered it in untenable condition.

44. The Tenants and their children have suffered severe disruption in their lives, as a result of the lead exposure and Landlord's failure to disclose information that would have allowed them to avoid the harm, including having to take risk reduction steps, testing of the children and the property, locating another residence, and changing schools.

FIRST AFFIRMATIVE DEFENSE:
BREACH OF WARRANTY OF HABITABILITY

45. The factual allegations above are incorporated herein by reference.

46. A warranty of habitability was imposed by law on Landlord by virtue of (a) the 1992 Residential Lead-Based Paint Hazards Reduction Act, 28 U.S.C. § 4852d, which required him to disclosure of the lead-based paint hazard; and (b) the course of dealing between the parties, and/or by acts done in the ordinary performance or by ordinary practices in the trade.

47. Tenants had reasonable expectations of compliance by Landlord with all applicable federal laws ensuring the safety and suitability of the premises.

48. Additionally, a warranty of habitability was imposed upon Plaintiff by virtue of the lease provisions that the lease was subject to cancellation if the premises became untenantable from any cause, and further, that Landlord, as owner, would be liable for any damage or injury to tenants, occurring on the premises, if such damage was the proximate result of negligence or the unlawful act of Landlord, his agents or employees.

49. Landlord's failure to disclose lead-based paint hazards of which he knew, or which, based on his knowledge and experience as a realtor and landlord he should have known, constituted a breach of the above-described implied warranties of habitability, entitling Tenants to rescission of the lease and /or actual and consequential damages.

SECOND AFFIRMATIVE DEFENSE:
CONSTRUCTIVE EVICTION

50. The factual allegations above are incorporated herein by reference.

51. Landlord's acts and omissions, described above, constituted an interference with Tenants' possession of the premises which was so serious as to deprive the Tenants of the beneficial enjoyment of the leased premises.

52. While Landlord's acts and omissions, giving rise to grounds for constructive eviction, existed throughout the time Tenants had possession of the premises, the Tenants did not discover the same until September, 2002, and vacated the premises within a reasonable time of such discovery.

THIRD AFFIRMATIVE DEFENSE:
BREACH OF COVENANT OF QUIET ENJOYMENT

53. The factual allegations above are incorporated herein by reference.

54. Landlord's acts and omissions, described above, constituted a breach of the covenant of quiet enjoyment, which covenant was either expressly provided by virtue of the

lease or, in the absence of such provision, was implied by law, by depriving Tenants of the beneficial use and enjoyment of the subject premises.

FOURTH AFFIRMATIVE DEFENSE:
FAILURE OF CONDITION PRECEDENT

55. The factual allegations above are incorporated herein by reference.

56. Landlord failed to meet a condition precedent to enforcement of the contract by failing to provide either a three day written notice of default and opportunity to cure, or a thirty day termination notice, as required by the contract.

FIFTH AFFIRMATIVE DEFENSE:
FRAUDULENT CONCEALMENT OR CONSTRUCTIVE FRAUD

57. The factual allegations above are incorporated herein by reference.

58. Landlord failed to disclose known defects to Tenants; specifically, Landlord failed to disclose that the property was contaminated with lead.

59. Landlord had actual or constructive knowledge of the lead contamination.

60. Landlord had a duty to disclose the lead contamination to Tenants arising out of the relationship between them as landlord-tenant.

61. Landlord made deceptive material misrepresentations of past or existing facts regarding the habitability of the property and its fitness for use as a residence, and/or remained silent about such facts despite the existence of a duty to disclose such facts.

62. Tenants were injured as a proximate result of Landlord's actions, as described above.

SIXTH AFFIRMATIVE DEFENSE:
BREACH OF LEASE AGREEMENT

63. The factual allegations above are incorporated herein by reference.

64. Landlord's acts and omissions, namely, his failure to disclose the lead contamination Tenants, constituted negligence and constituted an unlawful act which was the proximate cause of damage or injury to Tenants; Landlord, as owner, is liable to the Tenants for any such damage or injury, pursuant to the terms of the lease.

65. The undisclosed lead hazard further constituted a cause which rendered the premises uninhabitable, giving right to terminate, which Tenants, in fact, exercised by written notice, a copy of which is attached hereto as Exhibit B.

COUNTERCLAIMS

1. Tenants re-allege, and incorporate by reference, all paragraphs set forth in their factual allegations and affirmative defenses above.

2. ***Breach of Warranty of Habitability, Constructive Eviction, and Breach of Covenant of Quiet Enjoyment:*** As a result of Landlord's acts and omissions which constituted breach of the warranty of habitability, constructive eviction, and/or breach of covenant of quiet enjoyment, Tenants are entitled to rescission and retroactive rebate of all amounts paid to Landlord for rent or otherwise, including their damage deposit, which upon knowledge and belief are in the total sum of eight thousand, two hundred dollars (\$8,200.00); alternatively, Tenants are entitled to the difference between the value of the premises as warranted, and the value of the premises as received; Tenants are additionally entitled to the consequential damages

arising out of the disruptions in their lives described in factual paragraph 44 above.

3. ***Breach of Contract:*** As a result of Landlord's acts and omissions that constituted untenable conditions pursuant to the lease agreement, Tenants are entitled to damages as described in the immediately preceding paragraph, or alternatively, any damages the parties could have reasonably contemplated at the time of the contract.

4. ***Negligence; failure to disclose latent defect; fraudulent concealment or constructive fraud:*** Landlord had a duty, pursuant to the lease and imposed by law, to disclose all potentially harmful conditions to the Tenants; Landlord's failure to disclose hazardous conditions, as set forth above, constituted failure to disclose a latent defect, and fraudulent concealment or constructive fraud, all of which caused injury to Mr. and Mrs. Doe; Tenants were further deprived of the opportunity to protect themselves against the hidden danger while they occupied the subject premises. Defendants are entitled to fair compensation for injury sustained as the natural and proximate result of Landlord's wrongful acts and omissions.

5. ***Violation of 42 U.S.C. § 4852d; treble damages:*** Landlord's acts and omissions, set forth above, constituted knowing violation of the Residential Lead Paint Hazard Reduction Act, rendering him liable to Tenants in an amount three times the amount of damages incurred by Tenants. 42 U.S.C. § 4852d(b)(3).

6. ***Failure to comply with security deposit requirements:*** Landlord failed to return Tenants' security deposit of \$400.00 or to submit an itemized statement for deductions after Tenants' termination of the lease and delivery of possession, as required by lease and by Indiana law. Landlord is liable to Tenants in said amount pursuant to I.C. § 32-7-5-12, which failure further constitutes an agreement that no damages are due by Tenants.

NON-WAIVER OF PERSONAL INJURY ACTION BY MINOR CHILDREN.

Any personal injury claims held by the Tenants' three minor children are specifically excluded from this action, in that assessment of permanent damage to the children from lead-based paint cannot yet be determined.

WHEREFORE, Defendants, John and Mary Doe, respectfully request that plaintiff take nothing by way of his complaint, for a judgment against plaintiff in the amount all rent previously paid, in the amount of \$7,800.00, plus the damage deposit, of \$400.00, with the imposition of treble damages pursuant to 42 U.S.C. §4852d(b)(3), and additionally, or in the alternative, for such sums which are reasonable in the premises, for any costs expended herein, and for all other just and proper relief.

John Attorney
Safety, Healthy & Holmes
330 E. Leadsafe Road
Anyville, IN 47101
(812) 444-4000

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served personally or by U. S. Mail, postage prepaid, this 1st day of February, 2003, upon Freddy F. Lawyer, Esq., Attorney for Plaintiff, Dewey, Cheatham, Howe & Lawyer, 100 West North Street, Anyville, IN 47101.

John Attorney