

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2017 NOV - 7 A 10: 37

In Re: ROGER DEMAR) CIVIL DIVISION
D&R FAMILY PROPERTIES, LLC) Docket No. 643 - 11 - 17 umw
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FILED

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Roger Demar and D&R Family Properties, LLC (“Respondents”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

Regulatory Framework

1. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.
2. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).
3. All paint in rental target housing is “presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based.” 18 V.S.A. § 1760(a).
4. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.
5. EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified

or reported to the owner, and posting lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a) (2), (4) and (7).

6. The EMP requirements also mandate that an owner of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and with the owner's insurance carrier. 18 V.S.A. § 1759(b).
7. A violation of the lead law requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6). Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).
8. The Vermont Consumer Protection Act, 9 V.S.A Chapter 63, prohibits unfair and deceptive acts and practices, which includes the offering for rent, or the renting of, target housing that is noncompliant with the lead law.
9. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.

Respondents' Rental Housing and Lead Compliance Practices

10. Respondents own sixteen rental properties located at: 35 East High Street (Morrisville); 612 VT Route 15 W (Morristown); 630 VT Route 15 W (Morristown); 2317 VT Route 15 (Hardwick); 40 Granite Street (Hardwick); 106 Church Street (Hardwick); 43 Glenside Avenue (Hardwick); 115 Glenside Avenue (Hardwick); 245 Lower Main Street (Johnson); 53 Gihon Lane (Johnson); 42 Upper French Hill Road (Johnson); 2681 Hogback Road (Johnson); 55 Gihon Lane (Johnson); 103 Gihon Lane (Johnson); 48 Granite Street (Hardwick); and 726 Route 100C (Johnson) all located in Vermont (collectively, "the Properties").

11. The Properties were all constructed prior to 1978, and therefore, are pre-1978 “rental target housing” within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are all subject to the requirements of 18 V.S.A. Chapter 38.
12. Respondents have in the past and continue presently to rent and offer for rent units in the Properties.
13. On January 5, 2017 and February 15, 2017, the Vermont Department of Health sent a “Notice of Non-Compliance” indicating that Respondents had not filed an “EMP Rental Property Compliance Statement” for several of the Properties. The Department allowed for 30 days for Respondents to file the necessary statements.
14. Respondents did not respond to the 30-day Notice, and did not file EMP compliance statements within 30 days.
15. On August 30, 2017, Respondents confirmed that nine rental properties were EMP compliant, but seven properties did not have not current EMP compliance statements. Respondents submitted a compliance plan to bring the seven properties into compliance and file EMP statements.
16. Respondents admit the facts described in ¶¶ 10-15.

The State’s Allegations

17. The Vermont Attorney General’s Office alleges the following violations of the Consumer Protection Act and Lead Law:
 - a. Failing to file EMP compliance statements for rental properties.
18. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

Assurances and Relief

In lieu of instituting an action or proceeding against Respondents, the Attorney General and Respondents are willing to accept this AOD pursuant to 9 V.S.A. § 2459.

Accordingly, the parties agree as follows:

19. Respondents shall fully and timely comply with the requirements of the Vermont lead law, 18 V.S.A., Chapter 38, as long as they maintain any ownership or property management interest in the Properties and in any other pre-1978 rental housing in which they currently have, or later acquire, an ownership or property management interest.
20. Respondents shall complete all EMP inspections and work of the Properties (as specified in 18 V.S.A. § 1759) as described in Respondents' August 30, 2017 compliance plan, giving priority to the Properties where a child age 6 or under is residing. Pursuant to 18 V.S.A. § 1759(a)(3), exterior work of the Properties may be postponed until June 1, 2018, so long as access to exterior surfaces and components of the Properties with lead hazards and areas directly below the deteriorated surfaces are clearly restricted. All interior work must be completed promptly. If Respondents require additional time to complete the work, Respondents will contact the Attorney General's Office and provide a detailed justification for any extension.
21. Within one week of completion of the EMP work at the Properties described in the paragraph above, Respondents will file with the Vermont Department of Health, Respondents' insurance carrier and with the Office of the Attorney General, a completed EMP compliance statement for all Properties, and will give a copy of the compliance statement to an adult in each rented unit of all Properties. The copy for

the Office of the Attorney General shall be sent to: *Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.*

22. In the event Respondents wish to rent a unit which becomes vacant in any of Respondents' pre-1978 rental housing before such housing is made EMP compliant, Respondents shall provide advance written notice of the intent to rent to the Office of the Attorney General at the address listed above. Respondents' advance written notice shall also: (1) verify that the interior of the specific unit to be rented is EMP compliant; (2) provide an update as to any remaining EMP work to be performed at the property, including the date by which the entire property will be EMP compliant. Otherwise, Respondents shall not rent, or offer for rent, any unit which becomes vacant in any of property owned or managed by Respondents that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described above.

23. Respondents shall pay the sum of \$10,000 in civil penalties and costs for the failure to file EMP compliance statements, as follows:

- a. Respondents shall expend at least seven thousand dollars (\$7,000), including the actual cost of materials and labor, on lead hazard reduction improvements at any or all of the Properties described herein;
- b. Respondents shall pay three thousand dollars (\$3,000) by November 15, 2017, by a single check payable to "the State of Vermont" and sent to the following address: *Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.*

24. Respondent shall pay the costs of any follow-up compliance inspections as determined by the Attorney General's Office.

Other Terms

25. This AOD is binding on Respondents, however, sale of any pre-1978 rental property may not occur unless Respondents have complied with all obligations under this AOD, or this AOD is amended in writing to transfer to the buyer or other transferee all remaining obligations.

26. Transfer of ownership of any of Respondents' pre-1978 rental properties shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767 specifically relating to the transfer of ownership of pre-1978 rental housing.

27. This AOD shall not affect marketability of title.

28. Nothing in this AOD in any way affects Respondents' other obligations under state, local, or federal law.


29. In addition to any other penalties or relief which might be appropriate under Vermont law, any future failure by Respondents to comply with the terms of this AOD shall be subject to a liquidated civil penalty paid to the State of Vermont in the amount of at least \$5,000 and not more than \$10,000.

SIGNATURES APPEAR ON NEXT PAGE

DATED at Montpelier, Vermont this 2nd day of ~~October~~^{November}, 2017.


STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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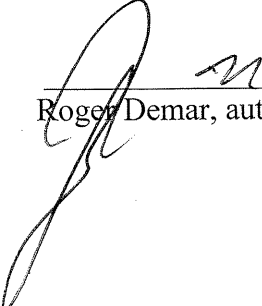
DATED at Stowe, Vermont this 27 day of October, 2017.

ROGER DEMAR

By: 
Roger Demar

DATED at Stowe, Vermont this 27 day of October, 2017.

D&R FAMILY PROPERTIES, LLC

By: 
Roger Demar, authorized agent