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## Residential Landlords – Beware!!

☠️ Lead poisoning ☠️. We are all aware of it. The most recently celebrated case was the Flint, Michigan public water supply that was found to have unacceptable levels of lead. We know that for children, ingesting lead may very well lead to adverse health consequences later on.

Most of us also know that lead poisoning can be caused by children eating lead-based paint in homes that were constructed before 1978. Well, what if you are a residential landlord and have lead-based paint in the apartments you are renting to families? A recent NYS Supreme Court appellate case is a warning to landlords. The case, *Rodrigues, et al v. Lesser, et al.*, Supreme Court, Appellate Division, Fourth Department (2017 NY Slip Op 03669, May 5, 2017) involves three plaintiffs who allege damages cause to them when they were children because they ingested lead-based paint in an apartment that their mother rented from the defendants. The case text does not give many fact details, but it would appear that the cause of action against the landlord arose when the three plaintiffs were young (under 18 years old) and they are now, as adults, suing for damages.

*Interesting Sidebar:* Any person with a basis for a lawsuit against another usually must bring the lawsuit within a specific period of time, known as the “Statute of Limitations”. The purpose of a statute of limitations is to prevent a plaintiff, who may have a good lawsuit, from doing nothing for a long period of time and then later suing the defendant at a time when the defendant no longer has access to records and evidence to make a defense to the case. ~cont pg. 2

### Free Workshops

**May 22, 2018**

Bartlett County Club  
 Olean, NY  
 6:30 to 8:30 p.m.

**June 5, 2018**

Jamestown Hampton Inn  
 Jamestown, NY  
 6:30 to 8:30 p.m.

**June 19, 2018**

Ishua Valley County Club  
 Franklinville, NY  
 6:30 to 8:30 p.m.

**BEWARE —***(continued from page 1)*

*Here's the catch.* The law states that if you have a basis to sue someone, you must do it within a certain amount of time... **unless** you are under the age of 18 (the age of majority in New York State). When a child possesses the right to sue, the statute of limitations is "tolled" until the child reaches 18 years old, then the clock on the statute begins to tick for the first time. In a typical "tort" lawsuit, the statute of limitations is three years. However, if a two year old child is involved, the child will have nineteen years within which to bring an action against the defendant.

In the Rodrigues case we have no idea when the cause of action arose and how many years went by before the children, now adults, actually brought the lawsuit. Imagine that you are a landlord renting an apartment to a family with young children who moved from your premises fifteen years ago and now all of a sudden, you are on the receiving end of a lawsuit for something that happened more than fifteen years ago!

The Court in Rodrigues, citing *Wood v Giordano* (128 AD3d 1488), reasoned that in order to establish that a landlord is liable for a lead-paint condition, a plaintiff must demonstrate that the landlord had actual or constructive notice of and a reasonable opportunity to remedy the hazardous condition. In Rodrigues, it was established that the landlord did not have actual notice; however, the Court held that the plaintiffs may establish constructive notice under *Chapman v.*

*Silber*, 97 NY2d 9, by demonstrating that the landlord "(1.) retained a right of entry to the premises and assumed a duty to make repairs, (2.) knew that the apartment was constructed at a time before lead-based interior paint was banned, (3.) was aware that the paint was peeling on the premises, (4.) knew of the hazards of lead-based paint to young children, and (5.) knew that a young child lived in the apartment." In its ruling, the Rodrigues Court gave the plaintiff opportunity to go back to the trial court and attempt to establish these five factors. If the plaintiffs could do so, then the landlord could be held liable for whatever health condition resulted from lead-based paint ingestion.

So what is a landlord to do? First, be sure to have good liability insurance. However, will most general liability insurance policies cover lead poisoning? Probably a standard commercial policy does not. Second, of course, if a known hazardous condition exists, remedy the situation by removing the peeling lead paint. Under the Chapman case, liability only exists if the condition is known and the paint is peeling.

Third, consider an asset protection technique to isolate the liability of the rental units from your other assets. The attorneys at Brooks & Brooks routinely assist clients with asset protection techniques, some of which are designed to isolate specific liability threats and protect the client's other assets from such liability.

*The exchange between Churchill & Lady Astor:  
She said, "If you were my husband I'd give you poison."  
He said, "If you were my wife, I'd drink it."*