

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

STATE OF VERMONT, )  
Plaintiff, )  
 )  
v. ) Washington Superior Court  
 ) Docket No. Wncv  
BRAD MOORE, )  
Defendant. )

**COMPLAINT**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, pursuant to the Vermont Lead Poisoning Law, 18 V.S.A., Chapter 38; the Residential Rental Agreements Law, 9 V.S.A., Chapter 137, the Vermont Consumer Fraud Act, 9 V.S.A. Chapter 63; and 18 V.S.A. § 130; and hereby makes the following Complaint against Brad Moore who owns and manages multiple properties in Johnson, Vermont and who has failed for at least three years to file affidavits of essential maintenance practices as required by 18 V.S.A. § 1759(b).<sup>1</sup>

**ALLEGATIONS**

*The Parties*

1. Brad Moore (“Defendant”) is the owner of record of the various rental properties located in Johnson, Vermont and listed on Attachment 1 (hereinafter “the properties”).
2. The properties are pre-1978 “rental target housing” within the meaning of 18 V.S.A. § 1751(19), and are subject to the requirements of 18 V.S.A., Chapter 38.

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<sup>1</sup> Unless otherwise noted, the statutory cites in the Allegations and Causes of Action are to the Lead Poisoning Law that was in effect at the time the Defendant failed to act in accordance with the law. Requests for Relief, and the cites therein, reflect amendments that went into effect on July 1, 2008.

3. The Attorney General has the right to appear in any civil action in which the state is interested when, in his judgment, the interests of the state so require. 3 V.S.A. § 157.
4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding the habitability of housing.

***Statutory Scheme***

5. Lead-based paint in housing, the focus of the Vermont Lead Poisoning Law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.
6. The Lead Poisoning Law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.
7. 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).
8. 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 by a tenant, and posting in a prominent place information on the importance of reporting deteriorated paint to the owner or the owner's agent. 18 V.S.A. § 1759(a)(2), (4) and (7).
9. The Vermont Lead Poisoning Law also required that rental target housing owners file affidavits attesting to EMP performance with the Vermont Department of Health and the owners’ insurance carrier. 18 V.S.A. § 1759(b).

***Facts Relating to Defendant***

10. Defendant is the owner of the properties listed in Attachment 1 which he has in the past and continues presently to rent and offer for rent.
11. The Vermont Department of Health sent Defendant a letter in April 2007 advising him of his obligations under the Vermont Lead Poisoning Law and requesting that he bring the properties into compliance.
12. Defendant failed to file any affidavits attesting to EMP performance concerning the properties with the Vermont Department of Health for at least the past three years.
13. The Vermont Department of Health has no evidence to demonstrate that Defendant maintained the properties in accordance with Vermont's Lead Poisoning Law during the past three years.
14. The Vermont Department of Health has no evidence to demonstrate that Defendant performed EMPs on the properties during the past three years.
15. The Vermont Department of Health has no evidence to demonstrate that Defendant filed any affidavits attesting to EMP performance with his insurance carrier during the past three years.

**FIRST CAUSE OF ACTION – Lead Poisoning Law**

16. The Lead Poisoning Law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all rental target housing and that affidavits attesting to EMP performance be filed with the Vermont Department of Health and the property owner's liability insurance carrier. 18 V.S.A. § 1759.
17. Defendant violated Vermont's Lead Poisoning Law, 18 V.S.A. Chapter 38, by:

- a. Failing to perform EMPs at any of the properties for the last three years;
  - b. Failing to file with the Department of Health affidavits attesting to EMP performance for any of the properties during any of the last three years,
  - c. Failing to file with their liability insurance carrier affidavits attesting to EMP performance for any of the properties for the last three years.
18. A violation of the EMP requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6).
19. Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

**SECOND CAUSE OF ACTION – Residential Rental Agreements**

20. The Vermont Residential Rental Agreements law mandates that landlords covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation. 9 V.S.A., § 4457(a).
21. By continuing to rent to tenants, and by offering for rent, the properties that were not in compliance with the Lead Poisoning Law, particularly after Defendant was notified of his obligation to comply with that law, Defendant violated 9 V.S.A., § 4457(a).
22. Violations of the Residential Rental Agreements Law are subject to actions by tenants including injunctive relief and to recover damages, costs and reasonable attorney's fees as long as the landlord had actual notice of the noncompliance from the Department of Health.

23. The Attorney General has an interest in ensuring that landlords, particularly landlords with multiple properties, comply with Vermont's Residential Rental Agreements Law.

**THIRD CAUSE OF ACTION – Consumer Fraud Act**

24. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce that include the rental of, or offering for rent, housing that is noncompliant with the Lead Poisoning Law.
25. By renting to tenants, and by offering for rent, the properties that were not in compliance with the Lead Poisoning Law, Defendant engaged in deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that he misrepresented a material condition of the rentals.
26. By renting to tenants, and by offering for rent, the properties that were not in compliance with the Lead Poisoning Statute, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that his actions amounted to per se non-compliance with existing law, was oppressive and unscrupulous, and caused substantial and unavoidable injury that was not outweighed by benefits to competition.
27. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).
28. Each day that a violation continues is a separate violation.

**RELIEF SOUGHT**

WHEREFORE, based on the allegations set forth above, the State respectfully asks the Court to award the following relief:

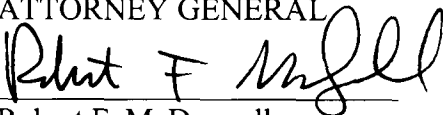
1. An Order finding that Defendant violated 18 V.S.A. § 1759, 9 V.S.A. § 4457(a), and 9 V.S.A. § 2453(a) and that the violations are continuing.
2. An Order requiring Defendant: (1) to identify all rental units built prior to 1978 in Vermont in which he has an ownership interest or responsibility for maintenance, (2) provide a copy of the contract for services for all properties other than those in which he has an ownership interest; and (3) to immediately comply with § 1759 as to all units in which he has an ownership interest or responsibility for maintenance unless EMP obligations are specifically excepted in the maintenance contract.
3. Civil penalties of not more than \$10,000.00 for each violation of the Lead Poisoning Act.
4. Civil penalties of not more than \$10,000.00 for each violation of the Consumer Fraud Act.
5. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting the action.
6. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 12<sup>th</sup> day of December, 2008.

Respectfully submitted,

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:



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**ATTACHMENT 1**

1. 163 Lower Main East, Johnson, VT 05656
2. 60 St. Johns Street, Johnson, VT 05656
3. 634 Clay Hill Road, Johnson, VT 05656
4. 104 College Hill Road, Johnson, VT 05656

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