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STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2011 APR 12 P # 12

CIVIL DIVISION
Docket No. Wncv
224-4-11

STATE OF VERMONT,
Plaintiff,

v.

FIRST VERMONT ODYSSEY, LLC
and FIRST VERMONT PROPERTIES,
LLC,
Defendants.

ASSURANCE OF DISCONTINUANCE

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from First Vermont Odyssey, LLC and First Vermont Properties, LLC (“Defendants”) this Assurance of Discontinuance, pursuant to 9 V.S.A. § 2459.

Background

The purpose of Vermont’s lead law is to eliminate the risk posed by lead-based paint in housing. Lead-based paint is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ. Before these health risks were known, lead-based paint was widely used in Vermont housing. Accordingly, 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).

Defendants are the owners of the properties listed in Attachment A (hereinafter “the Properties”). The Properties are residential rental properties constructed before 1978. Therefore, the Properties are subject to Vermont’s lead law, including the completion of annual essential maintenance practices (“EMPs”) that are designed to, *inter alia*, reduce

Office of the
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109 State Street
Montpelier, VT
05609

childhood lead poisoning. 18 V.S.A. § 1751(19), 1759. 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 paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4) and (7). In addition to performing the EMPs, the Vermont lead law requires owners of rental housing to file annual 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). A copy of the compliance statement must be given to all tenants and to new tenants prior to entering into a lease agreement. 18 V.S.A. § 1759(b)(3) and (4). A violation of the Vermont lead law 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).

In addition to the Vermont lead law, the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices, including the offering for rent, or the renting of, housing that is non-compliant with the Vermont lead law. 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). Each day that a violation continues is a separate violation.

The Properties are not in compliance with the Vermont lead law. However, Defendants have informed the State they intend to complete EMP work at the Properties prior to June 1, 2011. As such, the parties have agreed to enter into this Assurance of Discontinuance to allow Defendants additional time to comply with Vermont's lead law.

INJUNCTIVE RELIEF

Defendants agree to the following:

1. Defendants shall immediately ensure that access to exterior surfaces and components of the Properties with lead hazards, and areas directly below the deteriorated surfaces, are clearly restricted as described in 18 V.S.A. § 1759(a)(3).
2. On or before **June 1, 2011**, Defendants shall complete all EMP work at the Properties.
3. Defendants shall prioritize completing EMP work at any of the Properties where a child age 6 or under is residing.
4. Defendants shall ensure that all work performed at the Properties, whether by Defendants, their employees, or by hired contractors and/or painting companies, is performed using safe work practices consistent with 18 V.S.A. § 1760.
5. Defendants shall ensure that all contractors and/or painting companies have all necessary certifications, licenses, or permits required to perform the EMP work.
6. Defendants shall ensure that all contractors and/or painting companies performing EMP work on the Properties are aware of the provisions of 18 V.S.A. § 1760 and intend to use safe work practices.
7. Upon completion of the EMP work, but no later than **June 10, 2011**, Defendants shall file complete and accurate EMP compliance statements for each of the Properties with the Vermont Department of Health and with Defendants' insurance carrier(s). The EMP compliance statements for the Properties shall represent that exterior and interior EMPs have been completed.

8. Defendants shall give a copy of the EMP compliance statements to an adult in each rented unit of the Properties.
9. Upon completion of EMPs at any of the Properties, but not later than **June 10, 2011**, Defendants shall provide proof the EMP work at the Properties is complete to the Office of the Attorney General at the following address: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609. Copies of the EMP compliance statements for the Properties shall be sufficient proof of completion.
10. If Defendants anticipate being unable to meet the deadline for completing EMP work, and such delay is solely due to the contractors' and/or painting companies' delay in completing the EMP work, Defendants may request an extension of the deadline from the Attorney General's Office. The request shall be made as soon as the delay is recognized but no later than 10 days prior to the deadline. Further, the request must be made in writing and must include an approximate date by which the work shall be complete. The request must be approved by the State.
11. If Defendants wish to extend the deadline to complete EMP work for any other reason than that mentioned in paragraph 10, Defendants must make a request for an extension in writing at least 10 days in advance of the deadline. No extension may be granted unless agreed to in writing by the State and Defendants.
12. Defendants shall comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38 with respect to any ownership interest they have in the Properties and any other pre-1978 residential housing. Further, Defendants shall comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38

with respect to any property they provide property management services for, unless by property management contract, Defendants are explicitly not responsible for EMPs.

PENALTIES

13. Defendants shall pay civil penalties of six thousand (\$6,000.00). Payment shall be due June 10, 2011. Defendants shall make payment to the "State of Vermont" and send payment to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
14. If Defendants comply with the requirements of this Assurance of Discontinuance the penalties provided in paragraph 13 shall be waived by the State of Vermont.
15. Defendants will be in compliance with this Assurance of Discontinuance if they file complete and accurate EMP compliance statements for the Properties by June 1, 2011, as described in paragraph 7, or by a date otherwise agreed to as provided in paragraph 11 above. If, however, the State determines that Defendants filed incomplete or inaccurate EMP compliance statements, the Defendants must pay the penalties set forth in paragraph 13. In addition, the State may seek to any other appropriate action under Vermont law, including the Vermont lead law.

OTHER RELIEF

16. This Assurance of Discontinuance is binding on Defendants. However, the Defendants may not sell any of the Properties unless all obligations set forth herein have been completed or this Assurance of Discontinuance is amended in writing to transfer to the new buyer or other transferee all remaining obligations.

17. If the Defendants sell the Properties, or any interest therein, the transfer of ownership shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767, relating to the transfer of ownership of target housing.
18. This Assurance of Discontinuance shall not affect marketability of title of the Properties.
19. Nothing in this Assurance of Discontinuance in any way affects the obligations of future owners of any of the Properties under Vermont law, including under the Vermont lead law.
20. Nothing in this Assurance of Discontinuance in any way affects Defendants' other obligations under state, local, or federal law.
21. Defendants' failure to comply with the Vermont lead law at any of the Properties, or violations of the terms of this Assurance of Discontinuance, shall be subject to additional penalties of no less than \$10,000.00 per violation per day for each day the violation exists.

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APR 11 2011

Signature

By signing below, Defendants acknowledge and agree that the facts contained in the section entitled "Background" are true and voluntarily agree to and submit to all of the terms of this Assurance of Discontinuance.

DATED at Williston, Vermont this 4 day of April, 2011.

[Signature]
Evan Stainman as Managing-Member of First Vermont Odyssey, LLC

DATED at Williston, Vermont this 4 day of April, 2011.

[Signature]
Evan Stainman as Managing-Member of First Vermont Properties, LLC

Acceptance

In lieu of instituting an action or proceeding against Defendants, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance.

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 12th day of April, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: [Signature]
Robert F. McDougall

Assistant Attorney General
Office of the Attorney General
109 State Street
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802.828.3186

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ATTACHMENT A

With respect to Defendant First Vermont Odyssey, LLC:

1. 76 West Allen Street, Winooski, Vermont 05404;

With respect to Defendant First Vermont Properties, LLC:

2. 103 North Winooski Avenue, Burlington, Vermont 05401; and
3. 56 Cedar Street, Burlington, Vermont 05401.