

STATE OF VERMONT
WASHINGTON COUNTY, SS.

STATE OF VERMONT,)
Plaintiff,)
)
v.) Washington Superior Court
) Docket No. 422-6-07 Wncv
ESTATE OF CLARK W. HINSDALE, JR.)
Defendant.)

ASSURANCE OF DISCONTINUANCE

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from the Estate of Clark W. Hinsdale, Jr. (“Defendant”) this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

Background

Defendant is the owner of the properties listed in Attachment A (hereinafter “the properties”) and numerous other rental and commercial properties in the Burlington area.

The properties are residential rental properties constructed before 1978 and are therefore “rental target housing” subject to Vermont’s lead law, including the requirement of annual essential maintenance practices (“EMPs”) that are designed to reduce childhood lead poisoning risks. 18 V.S.A. §§ 1751(19), 1759. 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. 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).

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). The Vermont lead law requires owners of rental target 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).

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, rental target housing that is non-compliant with the lead law.

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). 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 listed in Attachment A and numbered 1-12 are not currently in compliance with the Vermont lead law because exterior EMP work is not expected to be complete by May 31, 2009 as required by law. 18 V.S.A. § 1759(a)(3). Interior EMP work has been completed at these 12 properties.

The properties listed in Attachment A numbered 13 and 14, the "Titus House" and "Sheehan House" in Charlotte, are not currently in compliance with the Vermont lead law and necessary EMP work has been identified in the interiors and exteriors of the properties.

Defendant has informed the State of its intention to complete the EMP work necessary at the properties but does not expect that the work will be complete by May 31, 2009.

INJUNCTIVE RELIEF

Defendant agrees to the following:

1. Defendant 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. Not later than May 31, 2009 all interior EMPs will be completed at the Titus House. Exterior EMP work shall be completed at Titus House by June 30, 2009.
3. Not later than July 31, 2009 all EMP work – interior and exterior – shall be completed at the Sheehan House.
4. Not later than June 30, 2009, Defendant will complete exterior EMP work at six of the properties listed in Attachment A that have been identified as still needing exterior EMP work (properties numbered 1-12 on Attachment A). The six selected properties shall include: 8-10 Isham Street, Burlington; 21 University Terrace, Burlington; 31 Platt Street, Winooski; and three other listed properties of Defendant's choice.
5. Not later than July 31, 2009, Defendant will complete exterior EMP work at three more of the properties listed in Attachment A that have been identified as still needing exterior EMP work (properties numbered 1-12 on Attachment A).

6. Not later than August 31, 2009, Defendant will complete exterior EMP work at the remaining three properties listed in Attachment A that have been identified as still needing exterior EMP work (properties numbered 1-12 on Attachment A).
7. Defendant will provide the Office of the Attorney General an update of the status of the work on the properties by June 1, 2009. The update shall be in writing and shall indicate if any of the properties have been completed, the order that the work at the properties described in paragraphs 4, 5 and 6 will be completed, the status of the work at the specific properties, the names of the individuals or companies who will be completing the work, and whether it is expected that the deadlines for EMP compliance will be met. Defendant shall also confirm that the access restrictions described in paragraph 1 were put into place on the properties. Communication with the Office of the Attorney General shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
8. All work performed at the properties, whether by Defendant, its employees, or by hired contractors and/or painting companies, shall be performed using safe work practices consistent with 18 V.S.A. § 1760. It shall be the obligation of Defendant to ensure that any contractors and/or painting companies it hires to perform EMP work are aware of the provisions of 18 V.S.A. § 1760 and intend to use safe work practices at the properties.
9. Upon completion of the EMPs at the properties, Defendant will file with the Vermont Department of Health, Defendant's insurance carrier(s), a completed

EMP compliance statement for each property, and will give a copy to an adult in each rented unit of the compliance statement for that tenant's property.

10. Upon completion of EMPs at any of the properties, Defendant shall provide proof of completion to the Office of the Attorney General at the address listed in paragraph 7. A copy of the EMP compliance statement for the property shall be sufficient proof of completion.
11. If Defendant anticipates not being able to fully comply with the deadlines for EMP compliance solely due to delays relating to contractors and/or painting companies hired to perform the EMP work, Defendant may request an extension of the deadline from the Attorney General's Office. Such request shall be made as soon as the delay is recognized and must include an approximate date by which the work shall be complete.
12. In the event that Defendant wishes by agreement with the Office of the Attorney General to extend any of the dates above for reasons not relating to delays relating to contractors and/or painting companies hired to perform the EMP work, such request must be made by Defendant at least 10 days in advance of the dates specified in this Assurance of Discontinuance.
13. Defendant shall fully and timely comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38, as long as it maintains any ownership interest in the properties listed in Attachment A or in any other pre-1978 residential housing in which it currently has or later acquires an ownership interest or provides property management services (unless by property management contract the Defendant is explicitly not responsible for EMPs).

PENALTIES

14. Defendant shall pay civil penalties of \$21,000.00. Payment shall be due September 10, 2009, and payment made to the "State of Vermont" and shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
15. If Defendant complies with the requirements of this Assurance of Discontinuance the penalties provided in paragraph 14 shall be waived by the State of Vermont.

OTHER RELIEF

16. This Assurance of Discontinuance is binding on Defendant, however, sale of any of the properties may not occur unless all obligations set forth herein have been completed or this Assurance of Discontinuance is amended in writing to transfer to the buyer or other transferee all remaining obligations.
17. Transfer of ownership of any of the properties shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767, specifically relating to the transfer of ownership of target housing.
18. This Assurance of Discontinuance shall not affect marketability of title.
19. Should Defendant fully transfer or sell its ownership interest in any of the properties after completing all obligations set forth herein, its obligations with respect to that particular property under this Assurance of Discontinuance are extinguished. However, 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 Defendant's other obligations under state, local, or federal law.

21. Any future failure by Defendant to comply with the Vermont lead law at any of the properties referenced in 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.

Signature

By signing below, Defendant acknowledges and agrees that the facts contained in the section entitled "Background" are true and voluntarily agrees to and submits to the terms of this Assurance of Discontinuance.

DATED at Shelburne, Vermont this 10 day of June, 2009.



Stuart M. Bennett, Executor, on behalf of
ESTATE OF CLARK W. HINSDALE, JR.

Acceptance

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

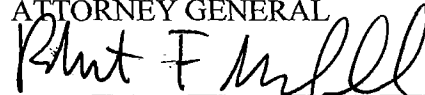
ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 11th day of June, 2009.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



Robert F. McDougall
Assistant Attorney General
Office of the Attorney General

109 State Street
Montpelier, Vermont 05609
802.828.3186

ATTACHMENT A

1. 2-4 Bradley Street, Burlington
2. 201 College Street, Burlington
3. 203 College Street, Burlington
4. 10 Hungerford Terrace, Burlington
5. 20 Hungerford Terrace, Burlington
6. 91-93 North Union Street, Burlington
7. 122 North Winooski Avenue, Burlington
8. 272 Pearl Street, Burlington
9. 62 South Willard Street, Burlington
10. 8-10 Isham Street, Burlington
11. 21 University Terrace, Burlington
12. 31 Platt St. Winooski
13. Titus House, One Mile Road, Charlotte
14. Sheehan House, 2760 Spear Street, Charlotte