

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

STATE OF VERMONT,	2012-01-15	)	
Plaintiff,		)	
		)	
v.		)	Washington Superior Court
		)	Docket No. Wncv
WILLIAM DAVISON and KATHLEEN		)	
SCHNEIDER,		)	433-6-10
Defendants.		)	

**ASSURANCE OF DISCONTINUANCE**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from William Davison and Kathleen Schneider ("Defendants") this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

**Background**

Defendants are the owners of the following property: 179 Main Street, Winooski, Vermont<sup>1</sup> (hereinafter "the property").

The property is a residential rental property constructed before 1978 and is therefore 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

<sup>1</sup> The property is on a corner and is also known as 10 East Spring Street, Winooski, Vermont.

Office of the  
ATTORNEY  
GENERAL  
Montpelier,  
Vermont 05609

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 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, 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 property is not currently in compliance with the Vermont lead law. Defendants have informed the State of their intentions to complete the EMP work necessary at the property but do not expect that the work will be complete until August 1, 2010.

#### **INJUNCTIVE RELIEF**

Defendants agree to the following:

1. Defendants shall immediately ensure that access to exterior surfaces and components of the property with lead hazards and areas directly below the deteriorated surfaces are clearly restricted as described in 18 V.S.A. § 1759(a)(3).

2. Defendants shall give priority to completion of EMPs at any unit of the property where a child age 6 or under is residing.
3. Not later than September 15, 2010 all EMP work, interior and exterior, shall be completed at the property.
4. All work performed at the property, whether by Defendants, their 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 Defendants to ensure that any contractors and/or painting companies they hire to perform EMP work are aware of the provisions of 18 V.S.A. § 1760 and intend to use safe work practices at the property.
5. Upon completion of the EMPs at the property as provided in paragraph 3, Defendants will file with the Vermont Department of Health and Defendants' insurance carrier, a completed EMP compliance statement for the property, and will give a copy to an adult in each rented unit of the property.
6. Upon completion of EMPs at the property as provided in paragraph 3, Defendants shall provide proof of completion 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. A copy of the EMP compliance statement for the property shall be sufficient proof of completion.
7. If Defendants anticipate 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, Defendants 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.

8. In the event that Defendants wish 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 Defendants at least 10 days in advance of the dates specified in this Assurance of Discontinuance.
9. Defendants 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 interest in the property or in any other pre-1978 residential housing in which they currently have or later acquire an ownership interest or provide property management services (unless by property management contract Defendants are explicitly not responsible for EMPs).

#### **PENALTIES**

10. Defendants shall pay civil penalties of five thousand dollars (\$5,000.00). Payment shall be due October 1, 2010, 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.
11. If Defendants comply with the requirements of this Assurance of Discontinuance the penalties provided in paragraph 10 shall be waived by the State of Vermont.


## OTHER RELIEF

12. This Assurance of Discontinuance is binding on Defendants, however, sale of the property 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.
13. Transfer of ownership of the property 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.
14. This Assurance of Discontinuance shall not affect marketability of title.
15. Should Defendants fully transfer or sell their ownership interest in the property after completing all obligations set forth herein, their 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 the property under Vermont law, including under the Vermont lead law.
16. Nothing in this Assurance of Discontinuance in any way affects Defendants' other obligations under state, local, or federal law.
17. Any future failure by Defendants to comply with the Vermont lead law at the property 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.

**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 the terms of this Assurance of Discontinuance.

DATED at Winooski, Vermont this 11 day of June, 2010.

  
\_\_\_\_\_  
William Davison

DATED at Winooski, Vermont this 11 day of June, 2010.

  
\_\_\_\_\_  
Kathleen Schneider

Office of the  
ATTORNEY  
GENERAL  
Montpelier,  
Vermont 05609

**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.

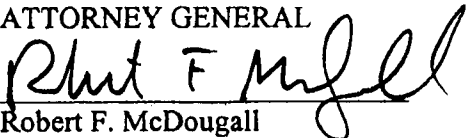
ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 16<sup>th</sup> day of June, 2010.

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

Office of the  
ATTORNEY  
GENERAL  
Montpelier,  
Vermont 05609