

[Restoring the Lead Paint RRP Opt-Out- How Does it Affect You?](#)



We've discussed the [Lead Paint RRP](#) requirements in the past here at Construction Law Musings. Since its passage almost a year ago, there has been a lot of debate about its necessity and cost. While this debate is interesting, I recommend a Google search on this topic for you to get all angles. I'll be discussing the potential legal ramifications of a possible change to the RRP in this post.

Recently, Senator James Inhofe introduced legislation ([S. 2148](#)) that would (among other items) reinstate a home owner's right (removed by the EPA a year ago) to opt-out of the RRP and its costs once that home owner is fully aware of the risks of lead based paint. As stated in an [article at For Residential Pros.com](#),

Specifically, S. 2148 would restore the opt-out provision, suspend the RRP if the EPA cannot approve commercially available test kits that meet the regulation's requirements, and restrict the EPA from expanding RRP activities to commercial and public buildings until a study is conducted to prove necessity. S. 2148 would provide an exemption from penalty for contractors who submit documentation for the first time or with typographical errors and allows for a process to resubmit corrected documentation.

Residential construction professionals, and particularly those that remodel homes, should be aware of this legislation for several reasons. One is of course that, should this bill pass, the RRP requirements will change and contractors will be able to give home owners the option of deciding whether in that owner's particular case the cost of following the RRP outweighs the potential risks of having lead paint in their homes. This could be a great boon for home owners and contractors alike particularly in this economy where every dollar counts.

However, any restoration of the opt-out does not come without the need to talk to a [construction lawyer](#) and modify your contracts accordingly. As stated in another [interesting article at For Residential Pros](#), the restoration of the opt out would only remove the onus of the EPA regulation. This alone would not remove the risk of a civil

suit by the home owner should the unlikely lead based disaster occur. For this reason, if you, as a residential remodeling contractor, are to allow for a home owner to opt out of the RRP, you will need to include a corresponding waiver by the home owner of any civil claims that would stem from that decision. In short, make sure that you are protected not only from EPA fines, but civil liability as well.

One other consideration is OSHA regulation that is outside of the RRP. Be sure that you're workers are protected and that you are aware of any other occupational safety issues that arise in the lead paint arena. Again, the Inhofe legislation only applies to the EPA regulation, not to other issues that involve the remediation of lead based paint.

In short, while numerous trade groups, [including the NAHB](#), applaud the legislation, be sure that you are protected with or without the opt-out.

Image via [Wikipedia](#)

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