

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**Harmony Homes, Inc.  
919 S. Highland Ave.  
Baltimore, MD 21224**

**U.S. EPA Docket No.  
TSCA-03-2010-0403**

**RESPONDENT.**

**1805 N. Chester Street, Baltimore, MD 21213  
2522 E. Federal Street, Baltimore, MD 21213  
2607 Llewelyn Ave., Baltimore, MD 21213  
934 N. Madeira Street, Baltimore, MD 21205  
1718 N. Montford Ave., Baltimore, MD 21213  
1719 N. Montford Ave., Baltimore, MD 21213  
617 N. Pulaski Street, Baltimore, MD 21217**

**ADMINISTRATIVE  
COMPLAINT  
AND NOTICE OF  
OPPORTUNITY  
FOR A HEARING ISSUED  
PURSUANT TO SECTION 16(a)  
OF THE TOXIC SUBSTANCES  
CONTROL ACT ("TSCA"),  
15 U.S.C. § 2615(a).**

**TARGET HOUSING.**

This Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division ("Complainant"), pursuant to EPA Region III Delegation No. 12-2-A.

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The Respondent in this action is Harmony Homes, Inc. of Baltimore, Maryland (“Respondent”). By issuing this Complaint, Complainant alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”), in relation to seven written lease agreements associated with seven different target housing units, described more fully in Paragraphs 18 - 62 of this Complaint.

Failure to comply with Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

In support of the Complaint, Complainant alleges the following:

### **I. JURISDICTION**

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.

### **II. DEFINITIONS AND REGULATORY REQUIREMENTS**

2. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter

[mg/cm<sup>2</sup>] or 0.5 percent by weight.

3. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.
4. Pursuant to 40 C.F.R. § 745.107(a)(1), the term “lead hazard information pamphlet” includes the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet approved for use in a particular State by EPA.
5. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
6. Pursuant to 40 C.F.R. § 745.103, the term “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.
7. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means any entity that offers target housing for lease, rent, or sublease, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit

organizations.

8. Pursuant to 40 C.F.R. § 745.103, the term “agent” means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.
9. Pursuant to Section 1004(23) of the RLBPHRA, 42 U.S.C. § 4851b(23), Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means: (1) A single-family dwelling, including attached structures such as porches and stoops; or (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
10. Pursuant to Section 1004(24) of the RLBPHRA, 42 U.S.C. § 4851b(24), and Section 401(15) of TSCA, 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
11. Pursuant to Section 1004(27) of the RLBPHRA, 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 40 C.F.R. § 745.113(b)(1) provides that each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”
13. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.
14. 40 C.F.R. § 745.113(b)(4) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, *inter alia*, a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. [§ 2686].

15. 40 C.F.R. § 745.113(b)(5) provides, in relevant part, that each contract to lease target housing involving one or more agents in the transaction to lease target housing on behalf of the lessor shall include, as an attachment or within the contract, a statement that:

- (i) The agent has informed the lessor of the [lessor's] obligations under 42 U.S.C. § 4852d; and
- (ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

16. Agent responsibilities are set forth at 40 C.F.R. § 745.115 and require, in pertinent part, that:

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

\* \* \*

(2) Ensure that the seller or lessor has performed all activities required under [40 C.F.R.] §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of [40 C.F.R.] §§ 745.107, 745.110, and 745.113.

17. The enforcement provisions of 40 C.F.R. § 745.118(e) and (f) state that:

\* \* \*

(e) Failure or refusal to comply with [40 C.F.R.] § 745.107 (disclosure requirements for sellers and lessors), [40 C.F.R.] § 745.110 (opportunity to conduct an evaluation), [40 C.F.R.] § 745.113 (certification and acknowledgment of disclosure) or [40 C.F.R.] § 745.115 (agent responsibilities) is a violation of [RLBPHRA Section 1018(b)(5),] 42 U.S.C. § 4852d(b)(5) and of TSCA section 409 (15 U.S.C. § 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. § 2615) for each violation. For purposes of enforcing this subpart [40 C.F.R. Part 745, Subpart F], the penalty for each violation applicable under 15 U.S.C. § 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997. [This amount was raised to not be more than \$16,000 for violations occurring after January 12, 2009, as set forth in 40 C.F.R. Part 19]

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18. Respondent currently is, and has been at all times relevant to the violations set forth in this Complaint, a Maryland corporation with a principal office located at 919 S. Highland Ave., Baltimore, Maryland, 21224, and a business office at 3141 Elliott St., Baltimore, Maryland, 21224. At all times relevant to the violations set forth in this Complaint, Respondent was doing business in the State of Maryland.
19. At all times relevant to the violations set forth in this Complaint for the leases associated with the below-listed housing units, Respondent was an “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, with respect to six (6) lease transactions at housing units located at the following six (6) properties located in Baltimore, Maryland:
- a. 1805 N. Chester Street;
  - b. 2522 E. Federal Street;
  - c. 2607 Llewelyn Avenue;
  - d. 1718 N. Montford Avenue;
  - e. 1719 N. Montford Avenue; and
  - f. 617 N. Pulaski Street.
20. At all times relevant to the violations set forth in this Complaint for the leases associated with the below-listed housing units, Respondent was an “agent” of the “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, with respect to the one (1) lease transaction at a housing unit located at the following one (1) property located in Baltimore, Maryland:

a. 934 N. Madeira Street.

21. The seven properties listed below for which Respondent was either the lessor or agent are hereinafter referred to as the "Lease Target Housing Properties":

<b>Lease Transaction Number</b>	<b>Addresses of Target Housing</b>	<b>Owner (O) or Agent (A)</b>	<b>Count Numbers</b>	<b>Lease Dates</b>
1*	1805 N. Chester Street	O	1, 6, 11	12/06/2005
2	2522 E. Federal Street	O	2, 7, 12	04/11/2006
3	2607 Llewelyn Avenue	O	3, 8	10/04/2005
4*	934 N. Madeira Street	A	16	04/01/2006
5*	1718 N. Montford Avenue	O	4, 9, 13	12/08/2005
6*	1719 N. Montford Avenue	O	5, 10, 14	11/30/2005
7*	617 N. Pulaski Street	O	15	02/17/2006

\* Child present

22. At all times relevant to the violations alleged herein, each of the Lease Target Housing Properties consisted of real property on which there was situated one building used as the home or residence for one or more persons.
23. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the Lease Target Housing Properties was housing constructed prior to 1978.
24. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the Lease Target Housing Properties consisted of housing that



property located at each of the Lease Target Housing Properties consisted of housing that was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.

25. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the Lease Target Housing Properties contained one or more “residential dwelling(s)” and was “target housing” within the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

**A. 1805 N. Chester Street (Lease Transaction #1)**

26. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated December 6, 2005 (hereinafter referred to as “Lease Transaction #1”), with a “Lessee” (hereinafter, “Lessee #1”), as those terms are defined at 40 C.F.R. § 745.103, for the purpose of renting or leasing the target housing located at 1805 N. Chester Street, Baltimore, Maryland.
27. Lease Transaction #1 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).
28. Lease Transaction #1 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
29. Lease Transaction #1 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor

was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.

25. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the Lease Target Housing Properties contained one or more “residential dwelling(s)” and was “target housing” within the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

**A. 1805 N. Chester Street (Lease Transaction #1)**

26. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated December 6, 2005 (hereinafter referred to as “Lease Transaction #1”), with a “Lessee” (hereinafter, “Lessee #1”), as those terms are defined at 40 C.F.R. § 745.103, for the purpose of renting or leasing the target housing located at 1805 N. Chester Street, Baltimore, Maryland.
27. Lease Transaction #1 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).
28. Lease Transaction #1 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
29. Lease Transaction #1 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where

no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**B. 2522 E. Federal St. (Lease Transaction #2)**

30. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated April 11, 2006 (hereinafter referred to as “Lease Transaction #2”), with a “Lessee” (hereinafter, “Lessee #2”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 2522 E. Federal St., Baltimore, Maryland.
31. Lease Transaction #2 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).
32. Lease Transaction #2 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
33. Lease Transaction #2 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**C. 2607 Llewelyn Ave. (Lease Transaction #3)**

34. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered

into a written contract, dated October 4, 2005 (hereinafter referred to as “Lease Transaction #3”) with a “Lessee” (hereinafter, “Lessee #3”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 2607 Llewelyn Ave., Baltimore, Maryland.

35. Lease Transaction #3 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).
36. Lease Transaction #3 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
37. Lease Transaction #3 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**D. 934 N. Madeira St. (Lease Transaction #4)**

38. Respondent, in its capacity as an “Agent” for the owner of the target housing, entered into a written contract, dated April 1, 2006 (hereinafter referred to as “Lease Transaction #4”) with a “Lessee” (hereinafter, “Lessee #4”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 934 N. Madeira St., Baltimore, Maryland.
39. Lease Transaction #4 was not a “[l]ease[] of target housing that ha[s] been found to be

lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).

40. Lease Transaction #4 was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

41. Lease Transaction #4 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**E. 1718 N. Montford Ave. (Lease Transaction #5)**

50. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated December 8, 2005 (hereinafter referred to as “Lease Transaction #5”) with a “Lessee” (hereinafter, “Lessee #5”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 1718 N. Montford Ave., Baltimore, Maryland.

51. Lease Transaction #5 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).

52. Lease Transaction #5 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

53. Lease Transaction #5 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**F. 1719 N. Montford Ave. (Lease Transaction #6)**

54. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated November 30, 2005 (hereinafter referred to as “Lease Transaction #6”) with a “Lessee” (hereinafter, “Lessee #6”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 1719 N. Montford Ave., Baltimore, Maryland.

55. Lease Transaction #6 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).

56. Lease Transaction #6 was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

57. Lease Transaction #6 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**G. 617 N. Pulaski St. (Lease Transaction #7)**

58. Respondent, in its capacity as an “Owner” and “Lessor” of the target housing, entered into a written contract, dated February 17, 2006 (hereinafter referred to as “Lease Transaction #7”) with a “Lessee” (hereinafter, “Lessee #7”), as those terms are defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 617 N. Pulaski St., Baltimore, Maryland.
59. Lease Transaction #7 was not a “[l]ease[] of target housing that ha[s] been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b).
60. Lease Transaction #7 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
61. Lease Transaction #7 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**Children of Lessees**

62. At the time the Disclosure Rule violations occurred for Lease Transactions #1, #4, #5, #6 and #7, as alleged in this Complaint, the lessees subject to these lease transactions all had children under the age of 18 who would and did reside with them in the leased premises of such target housing during some or all of the terms of such leases.

#### **IV. VIOLATIONS**

##### **Counts 1-5**

(Violations of 40 C.F.R. § 745.113(b)(1)

In Relation To Lease Transactions #1, #2, #3, #5, and #6)

63. The allegations contained in Paragraphs 1 through 62, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
64. Respondent, in its capacity as an “Owner” and “Lessor”, failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the leases for any of the target housing subject to Lease Transactions #1, #2, #3, #5, and #6.
65. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s failure to include the aforementioned “Lead Warning Statement,” either within or as an attachment to the leases for the target housing subject to Lease Transactions #1, #2, #3, #5, and #6, constitutes five (5) separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

##### **Counts 6 - 10**

(Violations of 40 C.F.R. § 745.113(b)(2)

In Relation To Lease Transactions #1, #2, #3, #5 and #6)

66. The allegations contained in Paragraphs 1 through 65, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
67. Respondent, in its capacity as an “Owner” and “Lessor”, failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of



lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, each of the leases for the target housing subject to Lease Transactions #1, #2, #3, #5, and #6, as required by 40 C.F.R. § 745.113(b)(2).

68. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the leases for the target housing subject to Lease Transactions #1, #2, #3, #5, and #6, constitutes five (5) separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

**Counts 11 – 15**

(Violations of 40 C.F.R. § 745.113(b)(4)

In Relation to Lease Transactions #1, #2, #5, #6 and #7)

69. The allegations contained in Paragraphs 1 through 68, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
70. Respondent, in its capacity as an "Owner" and "Lessor", failed to include a statement by the lessees affirming receipt of a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the target housing subject to Lease Transactions #1, #2, #5, #6 and #7, as required by 40 C.F.R. § 745.113(b)(4).
71. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15

U.S.C. § 2686, either as an attachment to, or within, the leases for target housing subject to Lease Transactions #1, #2, #5, #6 and #7, constitutes five (5) separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Count 16**

(Violations of 40 C.F.R. §§ 745.115(a)(2) and 745.113(b)(5)  
In Relation to Lease Transaction #4)

72. The allegations contained in Paragraphs 1 through 71, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
73. The contract to lease the target housing subject to Lease Transaction #4 did not include as an attachment to or within such contract a statement that: (i) the Respondent had informed the lessor of the target housing which is the subject of Lease Transaction #4, of such lessor's obligations under 42 U.S.C. § 4852d; and (ii) the Respondent was aware of its duty, as an agent of the target housing lessor, to ensure compliance with the requirements of the Disclosure Rule.
74. Respondent, in its capacity as "Agent", failed to ensure that an "Agent's Statement" meeting each of the requirements of 40 C.F.R. §§ 745.113(b)(5)(i) and (ii) was included in the contract to lease the target housing subject to Lease Transactions #4 as an attachment to or within such contracts, and failed to personally ensure compliance with such requirement, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(b)(5).

75. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to ensure that an "Agent's Statement" meeting each of the requirements of 40 C.F.R. §§ 745.113(b)(5)(i) and (ii) was included in the contract to lease the target housing subject to Lease Transactions #4 as an attachment to or within such contract, and failure to personally ensure compliance with such requirement, constitutes one (1) separate violation of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

#### **IV. PROPOSED CIVIL PENALTY**

Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This amount has been adjusted to \$11,000 per violation under the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19 for all violations occurring after July 28, 1997 and not more than \$16,000 for violations occurring after January 12, 2009, as set forth in 40 C.F.R. Part 19.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require ("statutory factors"). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and

EPA's *Section 1018 Disclosure Rule Final Enforcement Response Policy* ("ERP"), dated December 2007, a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. The ERP represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the Complainant's civil penalty proposal is contested through the hearing process described below, Complainant is prepared to offer a statutory basis for the elements of the ERP, as well as for the amount and nature of the civil penalty proposed.

Complainant proposes the assessment, against Respondent, of a civil penalty of up to \$11,000 for each violation alleged in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty amount at this time, but will do so at a later date after an exchange of information has occurred. See, 40 C.F.R. § 22.19(a)(4). As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, any facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued including Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it is the Respondent's responsibility to provide to Complainant financial information to support and establish a claim of an inability to pay the proposed penalty. Complainant's proposal of the assessment of a civil penalty against the Respondent does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations for which the assessment of a civil penalty is sought is provided below. This explanation is based upon the facts known to the Complainant at the time this Complaint is issued. Complainant's consideration of the statutory penalty factors enumerated above and the relevant guidance provided in the ERP.

**1. Explanation of Circumstance Level and Extent of Violation**

**A. Circumstance Levels:**

- a) 40 C.F.R. § 745.113(b)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a "high" level of impairment to a lessee's ability to assess the information required to be disclosed and have been characterized as Circumstance Level 2 violations in the ERP. As a result, each of the violations alleged in Counts 1, 2, 3, 4 and 5 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an appropriate penalty.
- b) 40 C.F.R. § 745.113(b)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a "medium" level of impairment to a lessee's ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, each of the violations alleged in Counts 5, 6, 7, 8, 9 and 10 of this Complaint may be

characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.

- c) 40 C.F.R. § 745.113(b)(4) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts 11, 12, 13, 14 and 15 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.
- d) 40 C.F.R. § 745.113(b)(5) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(5) are deemed to represent a “low” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 5 violations in the ERP. As a result, the violation alleged in Counts 16 of this Complaint may be characterized as a Circumstance Level 6 violation for purposes of calculating an appropriate penalty.

B. Extent Levels:

- a) Minor Violations: Defined as “[p]otential for a ‘lesser’ amount of damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees where no children or pregnant women live in the target housing is considered a “Minor Extent” violation

under the ERP. Respondent failed to provide disclosures and/or certifications to lessees with respect to three different lease agreements (Lease Transactions #2 and #3) for target housing at which it appears that lessees did not have children and did not include pregnant women at the time the Disclosure Rule violations occurred for such leases as alleged in this Complaint. Accordingly, the Disclosure Rule violations associated with each of these two Lease Transactions, as alleged in Counts 2, 3, 7, 8, and 12, respectively, are all "Minor Extent" violations.

- b) Significant Violations: Defined as "[p]otential for 'significant' damage to human health or the environment." Failure to provide lead-based paint disclosures and/or certifications to lessees of target housing in which a child six years of age or older but less than 18 years of age lives is considered a "Significant Extent" violation under the ERP. As alleged in this Complaint, at the time the Disclosure Rule violations occurred for the target housing subject to Lease Transaction #1, #4, #5, #6, and #7, Respondent failed to provide disclosures and/or certifications to the lessees subject to these leases. At the time the Disclosure Rule violations occurred for these six leases transactions, the lessees subject to these leases all had children under the age of 18 children who would and did reside with them in the target housing during some or all of the terms of such leases. Accordingly, the Disclosure Rule violations associated with

these lease transactions, as alleged in Counts 1, 4, 5, 6, 9, 10, 11, 13, 14, 15 and 16 are all “Significant Extent” violations.

- c) Major Violations: Defined as “[p]otential for ‘serious’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees of target housing in which a child under six years of age or pregnant woman lives is considered a “Major Extent” violation under the ERP. EPA has no information to determine that a child under six years of age or a pregnant woman was present at the time of any of the Lease Transactions for which Disclosure Rule violations are alleged in this Complaint.

**2. Summary of Penalty Calculation by Count**

<u>Counts</u>	<u>Lease Trans.</u>	<u>Violations</u>	<u>Circumstance/Extent</u>
1	1	745.113(b)(1)	Level 2, Significant Extent
2	2	745.113(b)(1)	Level 2, Minor Extent
3	3	745.113(b)(1)	Level 2, Minor Extent
4	5	745.113(b)(1)	Level 2, Significant Extent
5	6	745.113(b)(1)	Level 2, Significant Extent
6	1	745.113(b)(2)	Level 3, Significant Extent
7	2	745.113(b)(2)	Level 3, Minor Extent
8	3	745.113(b)(2)	Level 3, Minor Extent
9	5	745.113(b)(2)	Level 3, Significant Extent
10	6	745.113(b)(2)	Level 3, Significant Extent
11	1	745.113(b)(4)	Level 4, Significant Extent
12	2	745.113(b)(4)	Level 4, Minor Extent
13	5	745.113(b)(4)	Level 4, Significant Extent
14	6	745.113(b)(4)	Level 4, Significant Extent
15	7	745.113(b)(4)	Level 4, Significant Extent
16	4	745.113(b)(5)	Level 5, Significant Extent



### **NOTICE AND OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, James Heenehan, Sr. Assistant Regional Counsel, at:

Office of Regional Counsel (3RC30)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**SETTLEMENT CONFERENCE**

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA and the RLBPHRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, Respondent or Respondent's

legal counsel should contact Mr. Heenehan at (215) 814-2640 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

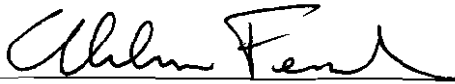
Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because a specific penalty is not proposed in the Complaint. See 40 C.F.R. § 22.18(a)(1).

#### **SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS**

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, Administrative Law

Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

9/27/10  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

10 SEP 03 PM 2:37  
RECEIVED REGION III EPA PA

**In the Matter of:**

**Harmony Homes, Inc.  
919 S. Highland Ave.  
Baltimore, MD 21224**

**U.S. EPA Docket No.  
TSCA-03-2010-0403**

**RESPONDENT.**

**1805 N. Chester Street, Baltimore, MD 21213  
2522 E. Federal Street, Baltimore, MD 21213  
2607 Llewelyn Ave., Baltimore, MD 21213  
934 N. Madeira Street, Baltimore, MD 21205  
1718 N. Montford Ave., Baltimore, MD 21213  
1719 N. Montford Ave., Baltimore, MD 21213  
617 N. Pulaski Street, Baltimore, MD 21217**

**ADMINISTRATIVE  
COMPLAINT  
AND NOTICE OF  
OPPORTUNITY  
FOR A HEARING ISSUED  
PURSUANT TO SECTION 16(a)  
OF THE TOXIC SUBSTANCES  
CONTROL ACT ("TSCA"),  
15 U.S.C. § 2615(a).**

**TARGET HOUSING.**

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Complaint, Docket No. TSCA-03-2010-0403, and associated enclosures, have been filed with the EPA Region III Regional Hearing Clerk, and that a copy of the same were sent to Respondent as set forth below:

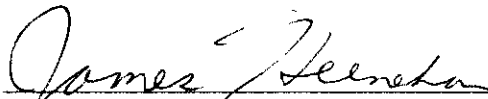
**UPS (Signature):** S. Rod Acchiardo, Esq.  
712 Jefferson Street  
Suite 200  
Tell City, IN 47586

President,  
Harmony Homes, Inc.  
3141 Elliot Street  
Baltimore, Maryland, 21224

and

Daniel R. Mosely  
Registered Agent for  
Harmony Homes, Inc.  
919 S. Highland Ave.  
Baltimore, Maryland, 21224

9/28/10  
Date

  
James Heenehan (3RC30)  
Counsel for Complainant  
U.S. Environmental Protection Agency, Region III  
(215) 814-2640