

STATEMENT ON RECENT COURT OF APPEALS DECISION ON THE LEAD LAW

- On October 24, 2011, the Court of Appeals of Maryland held that certain provisions of the Reduction of Lead Risk in housing Act ("Act"), codified in Title 6, Subtitle 8 of the Environment Article, that provide compliant landlords with qualified immunity from tort liability, were in violation of Article 19 of the Maryland Declaration of Rights, which provides citizens the right to access to the courts. The Court held that the unconstitutional provisions could be severed from the remainder of the Act, leaving all other provisions unchanged.
- **MDE's Lead Poisoning Prevention Program was not impacted by the ruling.** All laws requiring property owners to register pre-1950 properties and obtain lead inspection certificates remain in effect. Maryland's lead poisoning prevention efforts have been very successful, resulting in a 98% decline in the number of children with elevated blood lead levels. MDE intends to continue this strong regulatory program and is currently providing staff support to a legislative workgroup that is evaluating additional measures to reduce the occurrence of childhood lead poisoning.
- Property owners who "opt-in" to the program can continue to do so. As with pre-1950 properties, qualified immunity from tort liability no longer exists. Continuance of registration and performance of the risk reduction activities at each change in occupancy may assist in the demonstration of due care on the part of the property owner. Each owner in this situation is encourage to seek the advice of counsel on how to proceed.