

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND; :  
PETER F. NERONHA, in his :  
capacity as Attorney General of the :  
STATE OF RHODE ISLAND; and :  
DR. JAMES MCDONALD, :  
in his capacity as Interim Director, :  
RHODE ISLAND DEPARTMENT :  
OF HEALTH :

Plaintiffs, :

v. :

MORTGAGE EQUITY CONVERSION :  
ASSET TRUST 2011-1 (A.K.A. :  
MORTGAGE EQUITY CONVERSION :  
ASSET TRUST 2011-1, :  
MORTGAGE-BACKED SECURITIES :  
2011-1); U.S. BANK, NATIONAL :  
ASSOCIATION AS TRUSTEE FOR :  
MORTGAGE EQUITY :  
CONVERSATION ASSET TRUST :  
2011-1, MORTGAGE-BACKED :  
SECURITIES 2011-1 :

C.A. No. PC-2021-06541

Defendants. :

**FIRST AMENDED COMPLAINT AND PETITION FOR ENFORCEMENT OF  
COMPLIANCE ORDER AND FOR DECLARATORY RELIEF**

**A. PRELIMINARY STATEMENT**

1. This matter arises as a result of the failure of Mortgage Equity Conversion Asset Trust 2011-1 (a.k.a. Mortgage Equity Conversion Asset Trust 2011-1, Mortgage-Backed Securities 2011-1) and U.S. Bank, National Association as Trustee for Mortgage Equity Conversation Asset Trust 2011-1, Mortgage-Backed Securities 2011-1 (hereinafter “Defendants”) to comply with a lead notice of violation that has, by operation of law,

become a final compliance order (“Compliance Order”) of the Rhode Island Department of Health (“RIDOH”). The Defendants own and/or operate a property located at 36 Henrietta Street, Apartment 1, in Providence, Rhode Island (“the property”). The RIDOH Compliance Order was issued after a child living in the property tested positive for an elevated blood lead level and an inspection initiated by RIDOH found the presence of lead in violation of state law (“lead hazards”) in the child’s home.<sup>1</sup>

2. The Compliance Order became effective as a final agency order by operation of law following the Defendants’ failure to request an administrative hearing in response to a second notice of violation (“NOV”) issued by RIDOH. *See* R.I. Gen. Laws § 23-24.6-23; 216 R.I. Code R. § 50-15-3.19.11.
3. The violations outlined in the NOV risk the health of the property’s tenants, particularly children.
4. RIDOH is alerted by health care providers when children test positive for lead poisoning. In the event that a child tests positive for lead poisoning, RIDOH then categorizes each positive test by the severity of the poisoning, either a blood lead level (“BLL”) below 5 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ), a BLL between 5 and 9  $\mu\text{g}/\text{dL}$ , or a BLL over 10  $\mu\text{g}/\text{dL}$ . The higher the BLL, the more severe the lead poisoning, with any BLL over 5  $\mu\text{g}/\text{dL}$  being considered an elevated blood lead level.
5. According to the CDC, no safe blood lead level has been identified; therefore, any level of lead in the blood is harmful to children. Lead exposure – even at low levels –

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<sup>1</sup> To safeguard the child’s identity and protected health information this Amended Complaint does not include the identity of the poisoned child or information that could enable an individual to surmise the identity of the poisoned child.

damages the brain and nervous system, increases a child's risk of developing permanent learning disabilities, reduces concentration and attentiveness, slows growth and development, and causes behavioral problems that may extend into adulthood. Damage to a child's brain and nervous system from lead exposure can also cause future hearing and speech complications. Lead poisoning can affect nearly every system in the child's body.

6. Children are at the greatest risk of lead exposure in older homes that have lead paint. Children are most often exposed to lead paint when they place in their mouths objects or their own fingers that have lead particles or dust on them. Lead dust particles can come from the soil outside the home, from damaged paint inside the home, or from the friction of lead-painted surfaces like windows or doors. Child lead poisonings are completely preventable with the removal of lead hazards. For this reason, the Rhode Island General Assembly enacted a statutory framework to ensure that property owners remediate lead hazards.
7. In pertinent part, pursuant to R.I. Gen. Laws § 23-24.6-1 *et seq.*, when RIDOH is notified that a child has been lead poisoned, it will arrange for the child's home to be inspected for lead hazards. If lead hazards are found, RIDOH will issue a NOV to the property owner with an order that the lead hazards be remediated within 30 days. If the property owner does not provide evidence that the lead hazards have been remediated, RIDOH will issue a second NOV after the issuance of the first NOV. Should the property owner fail to comply with this second NOV within 30 days, the NOV becomes a final Compliance Order, and the Attorney General, after notifying in writing the property owner of their obligations under law and the potential penalties for continued

violations, may bring a civil action to bring the property into compliance and seek other relief. *See* R.I. Gen. Laws § 23-24.6-23.

**B. PARTIES**

8. Peter F. Neronha is the Attorney General of the State of Rhode Island (“Attorney General”). The Attorney General is the State of Rhode Island’s chief law enforcement officer and is authorized to pursue this action by, among other sections of the General Laws of Rhode Island, those cited herein, and the *parens patriae* doctrine.
9. Dr. James McDonald is the Interim Director of RIDOH.<sup>2</sup> RIDOH is authorized to pursue this action by various sections of the General Laws of Rhode Island cited herein.
10. Mortgage Equity Conversion Asset Trust 2011-1 (a.k.a. Mortgage Equity Conversion Asset Trust 2011-1, Mortgage-Backed Securities 2011-1) is an owner and/or operator of the property.
11. U.S. Bank, National Association as Trustee for Mortgage Equity Conversation Asset Trust 2011-1, Mortgage-Backed Securities 2011-1 is an owner and/or operator of the property.

**C. JURISDICTION**

12. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13, 8-2-14, 23-24.6-23(c)(1) and (d), and Rule 65 of the Superior Court Rules of Civil Procedure.
13. Personal jurisdiction over the Defendants in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 9-5-33.

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<sup>2</sup> Due to Dr. Nicole Alexander-Scott’s resignation as RIDOH director, Dr. James McDonald, in his official capacity, has been substituted as a party to this action pursuant to Rule 25 of the R.I. Superior Court Rules of Civil Procedure.

14. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

**D. FACTS**

15. The property is the first story of a multi-family home with three rental units.

16. It was built in the year 1900.

17. Following a child's routine testing for lead poisoning by a health care provider, RIDOH received notice from the health care provider that a child who resided in the property had an elevated blood lead level.

18. In response to the child's lead poisoning, RIDOH caused an inspection of the property to be conducted.

19. The inspection found lead hazards in all rooms of Apartment 1, including a child's bedroom.

20. The inspection also found lead hazards in both stairways and in the exterior paint and soil of the dwelling.

21. At the time of the child lead poisoning at the property, the property was not owned by the Defendants. However, the property owner at that time failed to remediate the lead hazards discovered during the inspection.

22. On or about February 2020 Defendants foreclosed on the property.

23. At the time Defendants foreclosed on the property, the existing lead hazards had still not been remediated.

24. At the time of foreclosure, Defendants had constructive or actual notice of the existing, un-remediated lead hazard violations because the notice of violation sent to the prior owner had been recorded as a lien on the property and/or because Defendants are a subsequent transferee of the dwelling. *See* R.I. Gen. Laws § 45-24.3-17(i) and (j).

25. Nevertheless, after Defendants foreclosed on the property, RIDOH issued a new first NOV, dated June 26, 2020, to the Defendants, to ensure that the Defendants were notified of the extant lead hazards.
26. The Defendants failed to respond to the first NOV.
27. On September 10, 2020, a RIDOH inspector completed an in-person compliance reinspection of the property.
28. The in-person compliance reinspection found that exterior lead hazards, including but not limited to lead hazards on the door, overhang, and door threshold, were still present at the property.
29. The RIDOH inspector was unable to enter the premises at that time.
30. Following this second compliance re-inspection, RIDOH issued a new second NOV to the Defendants. A second NOV issued to Defendants was posted on the door of the property, and another second NOV was sent to Defendants on September 11, 2020.
31. This second NOV was subsequently recorded as a lien on the property.
32. The second NOV sent to Defendants on September 11, 2020, states in part that a compliance re-inspection “dated 8/28/2019 indicated that the lead hazards were not corrected.”
33. The August 28, 2019 inspection referred to in the second NOV was both an interior and exterior inspection of the property; due in part to Defendants’ failure to respond to the first NOV or admit RIDOH entry to the property, RIDOH was unable to gain entry to the property on September 10, 2020 to perform an interior re-inspection.
34. RIDOH therefore determined based on the information available that the lead hazards observed on August 28, 2019, had not been corrected on September 10, 2020, given

that exterior lead hazards remained at that time and that Defendants had provided RIDOH with no evidence that the interior hazards were corrected.

35. Thus, RIDOH properly performed re-inspection of the property prior to issuance of the second NOV. Both the first NOV and second NOV for the property allege violations of the following laws:

- a. Lead Poisoning Prevention Act (R.I. Gen. Laws § 23-24.6);
- b. Rules and Regulations for Lead Poisoning Prevention (216 R.I. Code R. § 50-15-3); and the
- c. Housing Maintenance and Occupancy Code (R.I. Gen. Laws § 45-24.3).

36. Within thirty (30) days of receipt of the first NOV, Defendants were ordered to:

- a. Provide RIDOH with a copy of the Lead Disclosure Form signed by the current tenants of the property indicating they received a copy of the report and the NOV; and
- b. Hire a licensed lead contractor to perform lead hazard reductions to correct the violations found in the report and contact RIDOH when the violations had been corrected in order to schedule a clearance inspection; or
- c. Notify RIDOH of its enrollment in the Lead Safe Providence Program or RI Housing Lead Safe Homes Program; or
- d. Call RIDOH to schedule a site consultation and perform approved temporary lead hazard control measures, and submit a written request for an extension to the 30-day compliance period; and/or

- e. Call RIDOH to schedule a site consultation, become a certified Lead Renovator or hire a Lead Renovation Firm, and request a variance to perform lead hazard control to correct the violation.
37. Within thirty (30) days of receipt of the second NOV, the Defendants were ordered to correct the outstanding violations through a licensed lead contractor or request an administrative hearing to contest the issuance of the second NOV.
38. *To date, Defendants have failed to comply with the requirements of the above-mentioned NOVs, even as Defendants' tenants, if any, may have been exposed to serious lead hazards. This failure to comply constitutes a significant environmental and health hazard to any tenants of the property, as well as the general public.*

**COUNT I**  
**(Violation of State Lead Poisoning Prevention Laws)**

39. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 38, above, as if set forth in full.
40. Pursuant to R.I. Gen. Laws § 23-24.6-17 of the Rhode Island Lead Poisoning Prevention Act, property owners of multi-family rental units are required to remediate all lead hazards upon notification by RIDOH.
41. After Defendants received the first NOV, they had thirty (30) days to correct the lead hazards. Defendants have failed to do so, and thus have been non-compliant with regard to the property for more than one year as of the date of the filing of this Amended Complaint.
42. *Wherefore*, Plaintiffs seek a declaration, pursuant to R.I. Gen. Laws § 9-30-1, that Defendants violated the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 *et seq.*, with regard to lead hazard violations that existed at the property.



**COUNT II**  
**(Penalties for Violations)**

43. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 42 above, as if set forth in full.
44. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1) (the Lead Poisoning Prevention Act), the Attorney General’s Office has the power to initiate a civil cause of action and to impose “penalties and fines, as appropriate.” Additionally, pursuant to R.I. Gen. Laws § 42-9.1-2(a)(5), the Attorney General’s Office has the authority to “take all necessary and appropriate action, including but not limited to public education, legislative advocacy, and where authorized by law to institute formal legal action, to secure and insure compliance with the provisions of title[] 23,” including the Lead Poisoning Prevention Act of Chapter 24.6, Title 23.
45. This Honorable Court may assess such penalties and fines up to \$5000 per day that each lead hazard violation has existed in the property. *See* R.I. Gen. Laws § 23-24.6-27; RIDOH Penalty Matrix at 216 R.I. Code R. § 50-15-3.19.5(C).
46. *Wherefore*, this Honorable Court should therefore assess penalties and fines up to that amount.

**COUNT III**  
**(Public Nuisance)**

47. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 46, above, as if set forth in full.
48. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second NOV for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health.”

49. Additionally, pursuant to R.I. Gen. Laws § 10-1-1 *et seq.*, the Attorney General may bring an action in the name of the state to “abate the nuisance and to perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning any legal or equitable interest in the place from further maintaining ... the nuisance either directly or indirectly.” Similarly, where, as here, the interests in the health and well-being of the People of the State of Rhode Island are implicated and there is harm and potential for further harm to a substantial segment of the Rhode Island population, the Attorney General possesses *parens patriae* standing to commence legal action against the Defendants to stop their unlawful practices.

50. *Wherefore*, this Honorable Court should therefore enjoin the nuisance at the property.

**COUNT IV**  
**(Injunctive Relief)**

51. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 50, above, as if set forth in full.

52. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1), the Attorney General’s Office has the power to initiate a civil action to compel compliance with the Lead Poisoning Prevention Act through injunctive relief.

53. Furthermore, pursuant to R.I. Gen. Laws § 10-1-3, when an alleged nuisance appears before the court, a temporary injunction may be issued “enjoining any and all respondents from further maintaining or permitting the nuisance[.]”

54. *Wherefore*, this Honorable Court should therefore enjoin the nuisance at the property.

**COUNT V  
(Receivership)**

55. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 54, above, as if set forth in full.

56. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second NOV for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health,” and the Attorney General and RIDOH may “request the court to appoint a receiver for the property, the court in such instances may specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met.”

57. *Wherefore*, if the Defendants are unable or otherwise unwilling to assist in remediating the lead hazard violations at the property, this Honorable Court should appoint a receiver for the property.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, Peter F. Neronha, in his capacity as the Attorney General for the State of Rhode Island, and Dr. James McDonald, in his capacity as Interim Director of RIDOH, hereby request that Judgement be entered in favor of the Plaintiffs and that they be granted the following relief:

- a. That the Defendants contract with a Lead Hazard Contractor licensed by RIDOH and correct any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;

- b. That the Defendants obtain documentation that the Lead Hazard Contractor has corrected any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;
- c. That the Defendants ensure that any tenants at the property are provided with, or compensated for, adequate housing accommodations during any period that they are unable to remain in their homes due to the remediation of the violations outlined above;
- d. That the Defendants ensure that any and all other housing code violations present at the property are repaired;
- e. Should Defendants be unable or otherwise unwilling to assist in obtaining the relief requested above, that this Honorable Court appoint a receiver for the property, and specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met;
- f. That this Honorable Court issue a declaratory judgment pursuant to R.I. Gen. Laws § 9-30-1 that the Defendants violated the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 *et seq.* with regard to lead hazard violations that existed at the property;
- g. That this Honorable Court assess penalties and fines as required by law; and
- h. Such other and further relief as this Court deems just and equitable in accordance with the facts of this case.

Respectfully submitted,

State of Rhode Island; Peter F. Neronha, in his capacity as Attorney General of the State of Rhode Island; and Dr. James McDonald, in his official capacity as Director, Rhode Island Department of Health,  
Plaintiffs,

By:

/s/ Keith Hoffmann

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CERTIFICATION

I, the undersigned, do hereby certify that on this 7th day of February 2022, I electronically filed and served the within document through the electronic filing system. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I further certify that a copy has been sent via the email to:

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