

Real Estate Transactions in Former Orchard Lands



Understanding real estate disclosure law protects buyers from unknowingly purchasing—and becoming liable for—soil contamination.

More information

Dirt Alert Program:

<https://ecology.wa.gov/DirtAlert>

Former Orchard Lands:

<https://ecology.wa.gov/FormerOrchards>

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Special accommodations

To request Americans with Disabilities Act (ADA) accommodation, or printed materials in a format for the visually impaired, contact Rhonda Luke at 509-454-7838 or Rhonda.Luke@ecy.wa.gov, or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

In the early 20th Century to about 1950, lead arsenate was commonly used as a pesticide in Washington state apple and pear orchards in Chelan, Douglas, Okanogan, Yakima, and Benton counties.

The pesticide's components, lead and arsenic, do not easily breakdown and therefore have remained stable in the soil. Because of this, historic orchard sites in these counties have an increased potential for soil contamination. Levels of metals in soils are often above concentrations allowed under Washington state cleanup standards designed to protect human health and the environment.

It's important for families, homeowners, developers, and schools to understand what risks these properties may pose and to provide the resources needed to prevent and manage exposure and/or clean up contamination. This may occur before development or when selling properties that have already been developed.

How does this affect me if I am selling?

Sellers and realtors must comply with real estate disclosure laws to identify soil contamination. Chapter 64.06 Revised Code of Washington (RCW) creates seller disclosure forms with questions about the property being sold. Real estate transactions include a seller disclosure statement, known as Form 17. You can get this form from your real estate agent, or copy the questions from RCW 64.06.020.

Form 17 asks if the seller knows of any soil contamination. If you live on former orchard land and soil sampling has confirmed lead and arsenic contamination, you must disclose that on Form 17. Sellers also are required to disclose "adverse material defects," which could include soil contamination. The disclosure requirements apply to both improved and unimproved properties, with some exceptions. If you have questions about Form 17, please seek legal advice.

Why it matters

Potential buyers have the right to know about possible hazards in their environment, and sellers are required to disclose information about their property.

Under Washington law¹ (Chapter 70.105D.040 RCW), developers are responsible for potential contamination on properties they purchase, develop, and resell. Redevelopment is contingent upon cleaning up a site to standards that protect human health and the environment. Ecology is requiring soil sampling before new development occurs, a service we provide at no cost.

What should prospective buyers do?

Check the seller disclosure form. Unless the buyer expressly waives the right to receive the disclosure statement, the seller must provide Form 17 (RCW 64.06.020²). A buyer cannot waive the right to Form 17 if the answer to any of the questions in the Environment section are “yes.” The buyer can ask the seller and realtor if they are aware of any soil testing on or near the property. If soil sampling hasn’t been done, ask the seller if you may test the soil. Ecology’s Dirt Alert website³ has guidance about sampling soil⁴, or you can contact us to request free soil sampling, based on staff availability. **If you buy a contaminated property, you become liable for cleaning up that contamination.**

Health effects

Lead and arsenic in soil does not pose an immediate health risk. High concentrations of lead or arsenic in soil pose a long-term health risk. People are exposed primarily through hand-to-mouth contact with contaminated soil. This includes eating food or mouthing toys with traces of soil or dust, and breathing in dust.

In children, who are more sensitive to toxins than adults are, lead can cause behavioral problems such as hyperactivity, permanent learning difficulties, and reduced physical growth. In adults, lead can increase blood pressure, affect memory, and contribute to other health problems.

Arsenic can cause a variety of health problems, including heart disease, diabetes, and cancer of the bladder, lung, skin, kidney, liver, and prostate.

Healthy actions reduce exposure

- Wash your hands with soap. After working or playing in dirt, always wash your hands, especially before eating. Use plenty of soap and hot water—not hand sanitizer. Hand sanitizers don’t remove dirt.
- Take your shoes off at the door. Use a “wipe-off” mat to reduce the amount of dirt and dust coming into your home. Provide a shoe rack or area for shoes at your door. Ask guests to remove their shoes.
- Mop and vacuum once a week. You should dust with a damp cloth to reduce inhaling dust. Don’t sweep with a broom—it can stir up dust. Use a vacuum with a HEPA filter or a damp mop. Keep young children out of rooms for an hour after vacuuming to let dust settle.
- Wash children’s toys, bedding, and pacifiers frequently. Cover bare patches of soil in your yard to keep toys out of the dirt. Provide a sand box for children to dig in and cover it when not in use to keep soil and cats out. Place rubber mats, pea gravel, or mulch under children’s play sets.
- Wear shoes and gloves when gardening and working outdoors. Grow your produce in raised beds or pots made with untreated materials. Use a scrub brush to clean dirt from under your fingernails. Dust yourself off outside and wash dirt-covered clothes separately.
- Wash fruits and vegetables with a scrub brush before eating them. Peel root vegetables. Eat a diet rich in iron, calcium, and vitamin C to decrease the amount of lead your body absorbs.
- Wipe your pets’ paws before they come inside, and brush and bathe them regularly. Give pets their own beds.

¹ <https://app.leg.wa.gov/RCW/dispo.aspx?cite=70.105D.040>

² <https://apps.leg.wa.gov/rcw/default.aspx?cite=64.06.020>

³ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Dirt-Alert-program>

⁴ <https://apps.ecology.wa.gov/publications/documents/0609099.pdf>