



Quality Housing • Ethics • Professionalism



April 8, 2015

Monet Vela, Associate Governmental Program Analyst
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010
P65Public.Comments@oehha.ca.gov

Re: Proposed Regulation: Title 27, Article 6, Clear and Reasonable Warnings

Dear Ms. Vela:

The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing more than 50,000 owners and operators who are responsible for nearly two million rental housing units throughout California. CAA has the goal of promoting fairness and equality in the rental of residential housing and aiding in the availability of high quality rental housing in California. CAA advocates on behalf of rental housing providers in the legislative, regulatory, judicial, and other forums.

Starting in 2000, many of CAA's members were targeted with notices of violation of Proposition 65 for failure to warn regarding environmental tobacco smoke and automobile exhaust. In response, CAA conducted a number of educational sessions, coordinated joint representation for its members, and promoted compliance methodology developed in the course of the litigation for use by all of its members. Copies of our compliance materials and instructions are attached.

While the trial court's order approving the consent judgment, incorporating that methodology, was reversed by the court in *Consumer Defense Group v. Rental Housing Industry Members*, (2006) 137 Cal. App. 4th 1145, CAA's position is that the compliance method and message are "clear and reasonable" and still appropriate for its members' use, where warnings are required. CAA continues to promote this warning methodology.

Residential rental properties pose a host of challenges with respect to Proposition 65 compliance. Exposures to listed chemicals could occur on a given property due to the installation, presence, maintenance, or age of certain building materials, components or fixtures, activities of the residents and their guests (such as smoking tobacco or medical marijuana, or driving motor vehicles), and services or amenities provided by the management or owner (such as printers and copiers in business centers, food and alcohol provided at social gatherings, furniture provided in furnished units, building maintenance and cleaning, swimming pools, landscaping and pest control, etc. Each property, or area of the property, and potentially each unit will have a different combination of substances present that could result in an exposure that requires a warning.

In addition, while Proposition 65 contains an exemption for small businesses, it does not exempt small properties. Many of CAA's members are property management companies with ten or more employees who manage single family homes, duplexes, and other small property rentals. Providing warnings to residents and visitors to single family homes poses a unique challenge, since the residents may not want the signs in and around their homes, and the owner/manager has little or no ability to lawfully enter the premises to monitor signage. CAA's bifurcated warning methodology and detailed brochure were specifically designed to provide a "clear and reasonable" warning under these challenging circumstances and have been widely adopted throughout the rental housing industry. CAA's warning method and message were developed based on the current safe harbor regulation.

CAA is concerned by statements made in the ISR and at the March hearing that suggest that OEHHA believes that the current safe harbor warnings are not sufficiently "clear and reasonable" to comply with Proposition 65, even though a new requirement has not yet been adopted. This calls into question not only the current status of the existing regulation, but the reliability of any future interpretation of the statute. The law has not changed, yet a sign that was a compliance warning has now been transformed into a target for litigation.

The proposed regulatory safe harbor, while characterized as voluntary, would, in effect, require the replacement of at least 73,000 metal and plastic warning signs produced by CAA, which CAA members have posted at their properties. In addition many CAA member have produced their own signs or posted signs printed from CAA's website. Although the ISR recognizes the need to "retool" and replace existing warning materials, CAA is concerned that the potentially ever-changing list of chemicals to be included in the warning means that CAA's members must be prepared to switch out signs regularly. This not only creates an expense, but will provide another basis for lawsuits against those members who did not switch the sign in time.

While the provision of warnings that comply with the safe harbor is voluntary, the alternative, in the absence of a court-approved settlement or judgment is for our members to lie awake every night, calculating the costs of defending and settling a frivolous lawsuit.

Ultimately, CAA and its members' primary interest with respect to Proposition 65 is to have a clear and practical way to comply with the law that will minimize the risk of litigation. While CAA believes that the proposal does not provide more useful or meaningful warnings for housing applicants and tenants than its current methodology and that replacement of existing warning materials is a waste of CAA members' limited resources, the larger problem with the proposal is that it is simply unworkable and will result in more litigation. As described below, the specifics of the proposed "environmental" warnings and of the occupational, product, food, alcoholic beverage, furniture, and designated smoking area warnings are unworkable as applied to residential rental properties. The myriad of vague, overlapping, and inconsistent requirements make it impossible for a rental property owner or manager to be sure that any warning provided is sufficient. While in the past, litigation against our members has focused on whether or not a warning is required, now they will face litigation over whether the warnings are in all the right places, whether the area of exposure has been correctly calculated, whether a sign appears in the correct place in relation to the "affected area," whether the text appears in the right languages, in the correct newspapers, lists the correct chemicals, whether the warning contains the correct text in the correct size, and so forth. In addition to prompting private enforcement under Proposition 65, alleged non-compliance with any of these details will also give tenants an excuse to prematurely terminate their leases, reneging on their contractual obligations.

The Initial Statement of Reasons (ISR), at page 27, states that “general warnings generate confusion and encourage businesses to provide a warning when none is required, precisely because they are so vague and meaningless.” However, it is not the general or specific nature of the warning that causes businesses to provide warnings when none may be required. It is the underlying structure of the statute that causes the provision of warnings where no warning is likely required. The statute places the burden of determining whether a warning is required on the business. For most listed substances, no minimum level of exposure has been determined at which a warning is triggered, accordingly the business must conduct studies to make this determination. Then the business must also conduct exposure studies to determine what exposure results from normal use of a product or from a person’s presence in a certain environment, and also what levels of exposure occur when multiple listed chemicals may be present. Based on these studies, the business can then determine when and where a warning is required, although every aspect of that process is subject to challenge in litigation.

The OEHHA proposal states repeatedly that it applies “where warnings are required.” That is a difficult, if not impossible, evaluation for a property owner or manager to make, due to the variety of building materials, interior finishes, carpeting, and other items present, or activities that occur at each apartment building (or individual unit), or rental house. If a listed chemical is present, the owner/manager has three choices: (1) do nothing and wait for a notice of violation, (2) provide a warning, or (3) conduct testing to determine the actual level of exposure, and if there is not a predetermined level, conduct a study to determine how much exposure is too much. Even if the industry were to conduct some studies on “model” buildings, interior finishes, and carpeting, these results would not necessarily be applicable to every type and age of building. Given the huge expense and uncertainty of such an approach, our members have been counseled by their attorneys to provide warnings when listed chemicals in any amount are likely to be present.

CAA agrees with the Attorney General, as quoted in *CDG v. RHIM* that “it does not serve the public interest to have almost the entirety of the State of California swamped in a sea of generic warnings.” Notably, the *CDG v. RHIM* opinion states that a notice of violation is only appropriate for exposures that do not occur in “every building in this state” and suggests that for buildings and exposures that are indistinguishable from others, the public interest does not require a Proposition 65 warning. While CAA approves of this interpretation, it would mean that the type of warnings in the proposed regulation and also CAA’s existing compliance methodology are not necessary. For this reason, there is a tremendous need for clarification on whether or not a warning is required at all for residential rental properties, commercial buildings, hotels, and other types of buildings that contain the same chemicals and materials as every other building in the state.

CAA recognizes that the question of what is “knowingly and intentionally” in the rental housing context and whether warnings are required at all, is beyond the scope of this rulemaking and that the “proposed regulation becomes effective only after a business determines that the exposure to a listed chemical it knowingly and intentionally causes requires a warning.” However, this broader issue is the background against which CAA’s comments and suggestions below are set. The section by section comments below assume that a warning is, in fact, required.

CAA joins in the comments and concerns presented by the California Chamber of Commerce in the Chamber's comments of April 8, 2015. This proposal fails to achieve the Governor's call for meaningful reform of Proposition 65. The proposed safe harbor makes compliance much more difficult for the rental housing industry and greatly increases the likelihood of frivolous lawsuit.

The following are additional comments and concerns specific to the residential rental housing industry.

Specific Comments by Section:

- **25600 General**

Subsection (c) states a party may request that OEHHA provide interpretive guidance or adopt a warning method or message if the regulation doesn't provide one that is specific to a product, area, or chemical. It is unclear what standard OEHHA will use to evaluate warning methods/messages. The ISR, at page 30, discusses the potential adoption by OEHHA of existing warnings if they meet the minimum requirements of the regulation. Does that mean that any request by a business that takes a different approach than what appears in the safe harbor regulation is futile? Even if the warning method or content was contained in a court settlement?

Subsection (d) allows a business to provide supplemental information with a warning, as long as it does not contradict, diminish, or dilute the warning. How this would apply in the rental housing context is uncertain. Owners and managers are likely to get questions from a tenant or applicant about the warning - what can they safely say? Is there text in CAA's current warning brochure that "diminishes or dilutes" the warning? CAA has often referred tenants to the attached OEHHA publication "Proposition 65 Fact Sheet for Tenants." Can this publication be provided without "diminishing" the warning? It includes the following explanatory text:

Many apartment owners and managers have posted or distributed warnings to notify tenants that they may be exposed to one or more chemicals on the Proposition 65 list. For example, a warning may be given because tenants are exposed to chemicals in pesticides applied to landscaping or structures or chemicals in housing construction materials, such as lead in paint or asbestos in ceiling coatings.

A growing trend among rental property owners and other businesses is to provide warnings for chemicals on the list, such as tobacco smoke or motor vehicle exhaust, which are regularly released into the environment in or near rental housing. In some cases, however, owners and managers are providing warnings to avoid potential violations and lawsuits, even though exposure to chemicals on the Proposition 65 list has not been verified. You should discuss the warning with the owner or manager to learn why it was provided so that you and your family can make informed decisions about exposure to any of these chemicals and your health.

Proposition 65 generally does not prohibit a business from exposing people to listed chemicals nor does exposure to these chemicals necessarily create an immediate health risk. Also, as stated above, a warning may have been provided in some cases even though the level at which the chemical is present is actually too low to pose a significant health risk. It is important to find out why you have received the warning so that you can

discover which chemicals you are exposed to, and at what levels, to determine how best to protect your family's health.

Speak with the housing owner or manager directly to learn why you received a Proposition 65 warning.

If a tenant asks why a warning was provided, can the owner say "because we don't want to get sued?" Can the owner say nothing, or "I don't know"? When tenant says "Everything causes cancer these days;" is the owner required to disagree? In the absence of further guidance, the only way to avoid liability for "diminishing or diluting" is to provide no information beyond the minimum required in the safe harbor warning.

- **25600.1 Definitions**

(b) Environmental Exposure: This definition states that all exposures that are not product exposures or occupational exposures are environmental exposures. What about combinations of exposures? Are multiple types of warnings required when a rental complex holds a barbecue with alcoholic beverages and food served by employees in an outdoor common area where smoking is not prohibited?

(j) Sign: It is unclear what a "physical presentation of... electronically provided communication" is. On page 9 of the ISR, it states that "signs... can be presented electronically." What does this mean in relation to the posting requirement? The second half of the definition should be deleted as this text is repeated in 25605(a)(1). The two versions are not identical and will create confusion and encourage litigation over the method for posting and location of signs.

- **25600.2 Responsibility to Provide Product Exposure Warnings (Comments also address Sections 25603-4)**

These sections address the responsibility of various parties in the chain of commerce to provide warnings. They do not, however, address the responsibility, if any of the purchaser business to provide a warning to the ultimate user – i.e., the person who may be exposed. Is the exposure an environmental exposure or a product exposure? For example, in the rental housing context, products that are available for a resident's use but have been removed from their original packaging, could appear in a business center, leasing office, fitness center, food served at a social gathering, etc. What form of warning is required? What if the product is offered to the resident in an environment where there may be information in other languages – but no translation was provided with the product by the manufacturer, distributor, or retailer. Must an owner/manager provide translations for these products?

- **Section 25602 Chemicals Included In the Text of a Warning**

CAA agrees with OEHHA that not every listed chemical that can cause an exposure should be listed on the sign, but does not believe that the law requires the listing of specific chemicals at all. CAA's primary concerns are that the current list of twelve chemicals may be changed over time, that it is not limited to twelve chemicals, that the factors for selection are unscientific, and can be changed arbitrarily as they do not appear in the regulation. The need to continuously replace warnings throughout the State would invite litigation, including from tenants who would notice immediately that signs in and around their homes are changed.

In addition, the warning language “such as” is unclear. Does that mean that the listed chemicals are the actual chemicals to which exposure can occur, or that the warning is of exposure to chemicals “like those” listed, or that persons can be exposed to chemicals including those listed?

The average person reading this type of warning is not likely to understand that it is not an exhaustive list of possible chemical exposures in the area, or that the listed chemicals were not selected based on the severity of health risk. CAA requests that OEHHA explain why comparative risk to human health is not a factor in selecting chemicals for inclusion on the sign. That is the information that a person would want to know prior to exposure – how bad is it, which ones do I really need to worry about. This is what the tenants that have contacted CAA wanted to know, and the vague prohibition on “diminishing or diluting” will prevent any discussion.

Interestingly, the list does not include Environmental Tobacco Smoke, even though there are specific provisions in the statute regarding ETS warnings. The specific warning method and method regarding smoking has limited applicability only to “Designated Smoking Areas”, not all locations where smoking is not forbidden (see discussion below). While the list does include chemicals that are components of ETS, that fact is not common knowledge. A warning about benzene, formaldehyde, and carbon monoxide would not alert a person to the fact that the issue is smoking. Health and Safety Code Section 25249.7(l) assumes that posting of a warning is required “where exposure to environmental tobacco smoke [is] cause[d] by entry of persons... on premises owned or operated by the alleged violator, where smoking is permitted at any location on the premises.” It is unclear whether this provision of the statute would be satisfied by either the safe harbor environmental warning listing benzene, formaldehyde, and carbon monoxide, or the “Designated Smoking Area” safe harbor warning (discussed below.) This lack of clarity can only encourage litigation.

The regulation further states that a person may voluntarily include in a warning the names of other listed chemicals. This section does not require that exposure to a voluntarily listed chemical be “reasonably calculated to occur at a level that requires a warning.” This provision may encourage over-warning, while also encouraging litigation over whether the listing of additional chemicals “dilutes or diminishes” the warning.

Again, CAA and its members’ primary interest with respect to Proposition 65 is to have a clear and reliable way to comply with the law that will reduce the risk of litigation.

- **Section 25605 Environmental Exposure Warnings – Methods of Transmission**

This section provides that a warning is compliant if it is provided “using one or more of the following methods.” It is not clear whether use of a single method of the property owner or manager’s choosing is sufficient. For example, if the notice is emailed or mailed to all occupants of a property under subsection (a)(1), has the duty to warn of environmental exposures been satisfied or must another method be used to warn non-occupants, such as guests, delivery persons, tenant’s employees, parents of children attending a tenant’s daycare, etc. And, if the warning is published in a newspaper, is there no longer a need to provide warnings on site, or to occupants by mail, email or other delivery? The ISR cites *Environmental Law Foundation v. Wykle Research* (2005) 134 Cal App 4th 60, 66 which held that,

the various safe harbor methods . . . were not intended to be hierarchical. In other words no warning method is necessarily better than another. Any warning that fell into the established safe harbor provisions was adequate.”

From the context in the ISR, it is unclear whether it is OEHHA's intent that this principle carry over to the new regulations.

(1) Signs

“Public Entrances” - This section allows warnings to be provided using signs provided at “all public entrances” to the affected area. What is a “public entrance” in the context of an apartment property, or single family home rental? Does this include entrances that can only be used by residents or employees? The walkway from the public sidewalk? Vehicle driveways? Any door into the building? Only doors that are open to the public (i.e., the leasing office)? Doors that lead from one potentially affected area to another where the chemicals to which a person may be exposed are not the same, i.e., from the building to the pool area, from a hallway to the business center, from a non-smoking hallway into a resident’s unit where smoking is not prohibited. It is unclear what is considered a “point of entry” to the building. CAA’s current warning instructions contain more examples of entry points. It is also unclear where warning signs would go for vacation rentals (either through a management company or an AirBnB type of online business) or for a single condominium that is rented by a property management company in a complex with no other rentals?

“Affected Area” - What is the definition of affected area and how does it relate to the location of the sign? If the affected area is on the opposite side of a room from the door, can the warning be posted at the door, or must it appear immediately prior to entry into the affected area?

This section requires that the sign “clearly identify the area for which the warning is being provided.” This is not clear enough for an owner or the manager of rental property to determine how to describe the area where exposure may occur or to determine how many signs must be provided in various locations, since the exposures will likely vary from one place to another on any property.

As in the current regulation, this section states that the warning must be provided “in a conspicuous manner and under such conditions as to make it likely to be read, seen, and understood by an ordinary individual in the course of normal daily activity and must be reasonably associated with the location and source of exposure.” CAA requests that OEHHA take this opportunity to provide more detailed guidance about how to comply with this provision.

Translation - This section further requires that warning text be provided in any other language “used on signage in the affected area.” “Signage in the affected area” is unclear. Does this mean that if foreign language signage appears in unaffected areas of the property, it does not trigger this requirement? Must the signage that triggers the translation requirement appear within the area of exposure? It is also unclear whether this applies only to signage provided by the regulated business. Does this include only legally mandated signage or also things like “no smoking” signs, invitations to community events, and banners celebrating holidays. Does it include signage posted by residents or only by management? The ISR refers to the translation

requirement as applying “where the business is already providing information in an alternate language,” but the regulation does make this distinction.

While CAA can make warning signs and notice language available to its members in a variety of languages, this is only possible if there is some generic language that can be used in all rental housing. If every property requires multiple different warnings due the need for different signs in various locations with different lists of chemicals and different descriptions of specific areas of exposure for each, every management company and owner will have to obtain their own translations, opening the entire industry up to litigation over the merits of the translations and the underlying text.

(2) Warning provided to Occupants by Mail, Electronically, or Otherwise Delivered.

As discussed above, it is not clear whether providing a warning only to “occupants” rather than any person who could be exposed is sufficient. CAA supports the option of providing notices by email.

Generally, in the landlord/tenant context notices are provided prior to move-in, since that is when the tenant is making the choice to commit to a lease. What is the basis for the frequency of three months for provision of the notice, if nothing has changed and all occupants have already received the notice?

For notices provided under this section, they must be provided in English and “any other language ordinarily used by the business to communicate with the public.” It is not clear why the language requirement is different than that for signs (language used on signage on the property versus communications with the public). In the rental housing context, it is unclear whether a language that is used only to communicate with existing tenants is a language “ordinarily used to communicate with the public.” For example, if a resident manager speaks Tagalog with certain residents, does this trigger the requirement to provide notices in Tagalog?

(3) A Warning Published in a Newspaper at Least Once Every Three Months.

It is unclear what qualifies as “a newspaper.” What level of circulation is required? What does “area” mean in the phrase “that circulates in the area” mean? Can it be an online-only or primarily online publication? What is the basis for three months as the period of repetition? The warning is required to include a “map that delineates the affected area”. How would that work in the context of rental housing with multiple exposure sources of exposures on various floors and indoors and outdoors, that may vary from day to day based on activities at the property? Can one map/warning cover the entire property or is a separate warning required for each area of exposure?

The proposal also requires that “if a newspaper published in a language other than English is circulated in the affected area,” the warning must also be published in that newspaper and in that language. There is no limit on the number of potential languages or newspapers. It is unclear how an owner or manager of residential rental property would know what non-English newspapers are circulated in a particular community. In addition, non-English newspapers may be in languages that are not actually spoken by a significant number of residents in the area. For example, many urban newsstands carry French and German language newspapers, however, it doesn’t make sense for any business to provide their warnings through such

publications – even though there are “newspapers published in a language other than English” circulated in the area. It is also unclear what the “affected area” is in this context. In other parts of the regulation this term refers to the area where exposure can occur. In this section, however, it is likely that a larger area is intended when referring to an affected area where a newspaper is circulated.

- **Section 25606 Environmental Exposure Warnings - Content**

This section lists the specifically required elements of a safe harbor warning. The warning must state “Entering this area can expose you...” Subsection (a)(7) requires that “the specific area in which the exposure can occur must be clearly described in the warning message.” It is unclear how specific this must be and whether a specific area must be described for each source of exposure or for each chemical listed in the warning. For example, if a business center is provided in an older rental property for the tenants’ use, the area(s) of exposure to lead paint, toner cartridges, power cords, off gassing from new carpeting, could be “in the business center” or it could be a different area for each exposure source. If the area of exposure is by listed chemical, the areas would again be different. Also, it is unclear whether only the areas where exposure to the named chemicals occurs must be described or whether all areas where an exposure to any listed chemical can occur must be described.

- **Occupational, Food, Alcoholic Beverage Exposure Warnings,**

When every room or interior/outdoor space in a residential rental property has multiple exposures and may include food and alcohol exposures and in some instances the persons exposed are employees of the business that is required to warn or employees of a tenant, it is unclear how all the different warning requirements overlap. While CAA understands that additional occupational warnings are not required when OSHA warnings are provided, the OSHA warnings are generally triggered by exceeding a “permissible exposure level,” and this level is not relevant under Proposition 65. It is also unclear whether the safe harbor warnings for restaurants can be used where food and non-alcoholic beverage are offered by a business at a social function but are not for sale.

- **25608.12-13 Furniture Product Exposure Warnings**

It is unclear how, if at all, these provisions would apply in the rental housing context. Many CAA members offer units that are furnished, with furniture that is owned by the owner or procured by the owner on a tenant’s behalf. Or a unit may be furnished with rental furniture from an outside vendor. In properties where only unfurnished units are provided, there may still be furniture in a model unit or in common areas. It is unclear how the furniture product exposure warnings are to be provided in this situation.

- **25608.26 Designated Smoking Area Exposure Warnings – Method**

What is the definition of “Designated Smoking Area”? An area specifically set aside for that purpose? Or does it include all areas where smoking is expressly allowed? What if smoking is allowed only in the units of certain residents – does this sign have to be posted at their door and in their home? What about areas where smoking is simply not prohibited? While CAA’s Rental/Agreement defaults to non-smoking on the entire property, many rental agreements are just silent. State Law, Civil Code 1947.5, requires the owner of residential rental property to

disclose “any portion of the property on which the landlord has prohibited the smoking of cigarettes or tobacco products - not of areas where smoking is allowed.

It is also unclear how this sign relates to the environmental exposure sign, does that mean two signs must be provided? The proposal requires the smoke-specific sign to be posted at the entrance to and within the designated smoking area.

By contrast, Health and Safety Code Section 25249.7(l) assumes that posting of a warning is required where exposure to environmental tobacco smoke is caused by entry of persons . . . on premises owned or operated by the alleged violator, where smoking is permitted at any location on the premises. This suggests that the warning is to be posted where it can be seen prior to entering the premise rather than prior to entering the “designated smoking area” or specific area where smoking is allowed (or not forbidden) such as an individual tenant’s unit.

It is unclear whether this provision of the statute would be satisfied by either the safe harbor environmental warning listing benzene, formaldehyde, and carbon monoxide or by the “designated smoking area” safe harbor warning, which suggests that the owner must, in fact, provide three different types of warnings regarding smoking, unless smoking is completely prohibited on the property. This lack of clarity can only encourage litigation.

- **25608.27 Designated Smoking Area Exposure Warnings - Content**

Is this sufficient to warn of exposure to nicotine and other listed chemicals from “third hand smoke”, or does that require an additional “environmental” warning?

Thank you for your consideration of our comments and suggestions. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

California Apartment Association



By
Heidi Palutke
Research Counsel

Enclosures



Proposition 65 Fact Sheet for Tenants

Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

This fact sheet was prepared by the Office of Environmental Health Hazard Assessment (OEHHA), which administers the Proposition 65 program. It provides information to tenants whose apartment managers and owners have posted or distributed Proposition 65 warnings.

What is Proposition 65?

In 1986, California voters approved an initiative to address their growing concerns about exposure to toxic chemicals. That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65. Proposition 65 requires the State to publish a list of chemicals known to cause cancer, birth defects, or other reproductive harm. The list has grown to include over 800 chemicals since it was first published in 1987.

What chemicals are on the Proposition 65 list?

The Proposition 65 list contains two types of chemicals: *carcinogens*, which can cause cancer, and *reproductive toxicants*, which cause birth defects or other reproductive harm, such as sterility or miscarriages. Some chemicals may be additives or ingredients in pesticides, common household products, food, or drugs. Others may be industrial chemicals, dyes, or solvents used in dry cleaning, manufacturing, and construction. Still others may be byproducts of chemical processes; for example, motor vehicle exhaust.

What does a Proposition 65 warning mean?

Under Proposition 65, businesses are required to give a “clear and reasonable” warning before knowingly exposing anyone to a listed chemical above a specified level. This warning can be included on the label of a consumer product or published in a newspaper. An equally common practice is for businesses to provide a warning at the workplace or in a public area affected by the chemical.

Many apartment owners and managers have posted or distributed warnings to notify tenants that they may be exposed to one or more chemicals on the Proposition 65 list. For example, a warning may be given because tenants are exposed to chemicals in pesticides applied to landscaping or structures or chemicals in housing construction materials, such as lead in paint or asbestos in ceiling coatings.

A growing trend among rental property owners and other businesses is to provide warnings for chemicals on the list, such as tobacco smoke or motor vehicle exhaust, which are regularly released into the environment in or near rental

housing. In some cases, however, owners and managers are providing warnings to avoid potential violations and lawsuits, even though exposure to chemicals on the Proposition 65 list has not been verified. You should discuss the warning with the owner or manager to learn why it was provided so that you and your family can make informed decisions about exposure to any of these chemicals and your health.

Is my family’s health at risk from exposure to these chemicals?

Warnings must be provided for chemicals listed under Proposition 65 if exposure to them may present a significant risk of cancer or reproductive harm. For *carcinogens*, the chemical must be present at or above a level that could cause one additional case of cancer in a population of 100,000 people exposed to the chemical over a lifetime. For *reproductive toxicants*, the chemical must be present at or above 1/1000th of the level at which the chemical is determined to have no negative health risks (the “no-observable-effect level”).

Proposition 65 generally does not prohibit a business from exposing people to listed chemicals nor does exposure to these chemicals necessarily create an immediate health risk. Also, as stated above, a warning may have been provided in some cases even though the level at which the chemical is present is actually too low to pose a significant health risk. It is important to find out why you have received the warning so that you can discover which chemicals you are exposed to, and at what levels, to determine how best to protect your family’s health.

Where can I get more information?

Speak with the housing owner or manager directly to learn why you received a Proposition 65 warning. Property owners and managers are not required to notify OEHHA when they provide tenants with a warning. However, to obtain general information on the Proposition 65 list of chemicals, you may contact OEHHA at (916) 445-6900, or visit <http://www.oehha.ca.gov/prop65.html>. Following is a list of contacts for more information on Proposition 65 as well as chemicals that may be found in your home.

Type of Information	Contact
Proposition 65: Enforcement	California Attorney General (510) 873-6321, http://oag.ca.gov/prop65
Asbestos Indoor air quality	Indoor Exposure Assessment Unit, Air Resources Board (916) 322-8282, http://www.arb.ca.gov/html/flslist.htm
Lead	<ul style="list-style-type: none"> ○ Lead Coordinator in your county government office ○ Childhood Lead Poisoning Prevention Program (510) 620-5600, http://www.cdph.ca.gov/programs/CLPPB/Pages/default.aspx

Type of Information	Contact
Tenant issues	<ul style="list-style-type: none">○ Department of Consumer Affairs (800) 952-5210, http://www.dca.ca.gov/○ Department of Housing and Community Development (800) 952-5275, http://www.hcd.ca.gov/
Basis for Warning Signs	<ul style="list-style-type: none">○ California Apartment Association (800) 967-4222, http://www.caanet.org/

Sources of Chemical Exposures

California's Proposition 65 has identified hundreds of chemicals known to the State of California to cause cancer, and/or birth defects or other reproductive harm. The law requires that businesses with 10 or more employees warn you prior to knowingly and intentionally exposing you to any of these chemicals when the exposure is over a certain level. While many exposures are associated with industrial activities and chemicals, everyday items and even the air we breathe routinely contain many of these chemicals. This brochure provides warning and information regarding exposures to these chemicals that occur in this facility. In many instances, we do not have information specific to this facility. Instead we have relied upon experts in this field to tell us where and to which chemicals these exposures might occur. For other exposures to listed chemicals, enough is known to identify specific areas of exposure.

The regulations implementing Proposition 65 offer warnings for various circumstances. Some of those warnings you may see in this residential rental property include the following:

General – Warning: This Facility Contains Chemicals Known to the State of California To Cause Cancer, And Birth Defects Or Other Reproductive Harm.

Foods and Beverages – Warning: Chemicals Known To The State of California To Cause Cancer, Or Birth Defects Or Other Reproductive Harm May Be Present In Foods Or Beverages Sold Or Served Here.

Alcohol – Warning: Drinking Distilled Spirits, Beer, Coolers, Wine, And Other Alcoholic Beverages May Increase Cancer Risk, And, During Pregnancy, Can Cause Birth Defects.



CALIFORNIA APARTMENT ASSOCIATION

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(877) 999-7881 - toll-free fax
www.caanet.org

California's Proposition 65 Warning

California's Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986) requires businesses with 10 or more employees to provide warnings prior to exposing individuals to chemicals known to the State to cause cancer, and/or birth defects or other reproductive harm.

These types of chemicals are found within this establishment. This brochure provides you with information on what chemicals are present and what your exposures to them might be.

Warning

This Facility Contains Chemicals Known to the State of California to Cause Cancer and/or Birth Defects or Other Reproductive Harm.

Second Hand Tobacco Smoke and Tobacco Products.

Tobacco products and tobacco smoke and its by-products contain many chemicals that are known to the State of California to cause cancer, and birth defects or other reproductive harm. Smoking may occur in certain common and private areas.

Furnishings, Hardware, and Electrical Components.

Room furnishings and building materials contain formaldehyde, which is known to the State of California to cause cancer. Furniture, foams, brass keys, electrical power cords, carpeting, carpet padding, wall coverings, wood surfaces, and vinyl, contain a number of chemicals, including lead, and formaldehyde, known to cause cancer, and/or birth defects or other reproductive harm. Their presence in these materials can lead to exposures.

Pest Control and Landscaping.

Pests control and landscaping products used to control insects and weeds contain resmethrin, mycobutanol, triforin and arsenic trioxide which are known to the State to cause cancer and/or birth defects or other reproductive harm.

Mold and Fungi.

Certain molds and fungi contain chemicals, including sterigmatocystin, known to the State of California to cause cancer.

Construction and Maintenance Materials.

Construction and maintenance materials contain Proposition 65-listed chemicals, such as roofing materials manufactured with vinyl chloride monomer, benzene and ceramic fibers, which are known to cause cancer, or birth defects or other reproductive harm. Construction materials used in walls, floors, ceilings and outside cladding contain chemicals, such as formaldehyde resin, asbestos, arsenic, cadmium and creosote, which are released as gases or vapors during normal degradation or deterioration, and as dust or particulate when disturbed during repairs, maintenance or renovation, all of which can lead to exposures.

Certain Products Used In Cleaning And Related Activities.

Certain cleaning products used for special cleaning purposes such as graffiti removal and spot and stain lifters contain chlorinated solvents including perchloroethylene and urinal odor cakes contain paradichlorobenzene which are Proposition 65-listed chemicals known to cause cancer or birth defects or other reproductive harm.

Swimming Pools and Hot Tubs.

The use and maintenance of a variety of recreational activities and facilities such as swimming pools and hot tubs where chlorine and bromine are used in the disinfecting process can cause exposures to chloroform and bromoform which are chemicals known to the State of California to cause cancer.

Paint and Painted Surfaces.

Certain paints and painted surfaces contain chemicals, such as lead and crystalline silica, that are known to the State of California to cause cancer, and/or birth defects or other reproductive harm. Lead-based paint chips may be ingested and crystalline silica may be released into the air and lead to exposures.

Engine Related Exposures.

The operation and maintenance of engines, including automobiles, vans, maintenance vehicles, recreational vehicles, and other small internal combustion engines are associated with this residential rental facility. Motor vehicle fuels and engine exhaust contain many Proposition 65-listed chemicals, including benzene, carbon monoxide and, for diesel engines, diesel exhaust, which are known to the State of California to cause cancer, and/or birth defects or other reproductive harm. In parking structures and garages, exhaust fumes can concentrate, increasing your exposure to these chemicals.

Combustion Sources.

Combustion sources such as gas stoves, fireplaces, and barbeques contain or produce a large number of chemicals, including acetaldehyde, benzene and carbon monoxide, known to the State of California to cause cancer, and/or birth defects or other reproductive harm which are found in the air of this complex. Any time organic matter such as gas, charcoal or wood is burned, Proposition 65-listed chemicals are released into the air.

INSTRUCTION SHEET

PROPOSITION 65

Posting Requirements

Purpose of Warning

Proposition 65 requires the provision of “clear and reasonable warnings” by businesses prior to exposing any person to a chemical known to the state of California to cause cancer or birth defects or other reproductive harm.

Proposition 65 only applies to businesses with 10 or more employees.

The regulations provide warning messages and transmission methods that are deemed clear and reasonable for environmental exposures, but do not preclude a person from providing warnings other than those specified as long as the message is “clear” and the warning method is “reasonable.” These instructions are for the CAA recommended procedure for complying with the warning requirement using a combination of a brochure and warning signs. The procedures are designed to provide warnings to residents, guests and any other persons coming onto the property.

Depending on the size of the rental housing complex, different requirements apply. For larger complexes (those complexes with **5 or more** separate rental units) there is one compliance methodology. For smaller rental housing facilities (those complexes with **4 or less** separate rental units) there is a different compliance methodology.

- 1. Larger Complexes:** Rental properties that have **five (5) or more** rental units.
- 2. Smaller Facilities:** Rental properties with **four (4) or less** rental units.

The **first step** in implementing the CAA recommended compliance methodology at each property is to determine if the particular property is a larger complex **or** smaller facility. Once you determine the category of property you are dealing with, follow the guidelines below.

Compliance Guidelines for Larger Complexes (5 or more units)

Introduction: The compliance methodology for larger complexes has two key components: (i) posting warning signs at various locations throughout the complex, and (ii) distributing an informational brochure to existing and new tenants. In addition, the warning language refers people to a website (www.prop65apt.org), which contains the same information as the informational brochure and makes the brochure available to print.

1. Posting Warning Signs at Entrances and Other Locations

- **First**, the warning sign must be placed outside each **primary public entrance**, including entrances to parking garages (both vehicular and pedestrian), i.e., by entrance(s) to building, driveway(s), gate(s) to parking garage, door(s)/gate(s) providing access from parking garage to building, etc.).
- **Second**, if entrances to individual apartments are reached through pathways or other open areas (as opposed to through a common public entrance to the building), then the warning sign should be posted at each of the nearest points to these open areas, i.e., on walls or fences nearest the pathways providing access to the apartments.
- **Third**, if public areas such as pools, open spaces, playgrounds, or community buildings, can be accessed from a point other than a common public entrance to the building, then a warning sign should be posted near such areas (i.e., on a gate to a pool, and on a fence/wall nearest a playground). If these areas are accessed through a common public entrance, then no sign is needed near these public facilities/areas.
- **Fourth**, the warning sign must be placed on every employee bulletin board or in employee handbooks, if they exist. In addition, warning signs must be placed outside entrances to administrative offices, if any.

CAA members may print a copy of the warning sign from CAA’s website (www.caanet.org). You should not alter the **size** and **format** of the attached sign or the **warning language** (i.e., 8.5 x 11 inches; the word “WARNING” in all capital letters, underlined, and in Garamond 48pt.; the remaining text of sign in Garamond 40pt.; all text is bold), except you may enlarge the warning sign and text if you choose. Pre-printed plastic and metal signs may be ordered from your local association or by going on line to www.caanet.org/caastore.



2. Distributing the Informational Brochure to Each Existing and New Tenant

- **First**, you must distribute the informational brochure to (i) all existing tenants, and (ii) all new tenants at the time each tenant executes the initial rental/lease agreement. This is an additional requirement beyond posting the warning sign in the locations discussed above.
- **Second**, the informational brochure must be placed on every employee bulletin board or in employee handbooks, if they exist. This is to ensure employees in particular receive the warning.

A copy of the brochure is attached. CAA members also may print a copy of the information brochure from CAA's website (www.caanet.org). The brochure also is available for viewing and printing at www.prop65apt.org.

Compliance Guidelines for Smaller Facilities (4 or less units)

Introduction: The compliance methodology for smaller facilities involves distributing the informational brochure only. No warning signs are required to be posted at these smaller facilities.

Distributing the Informational Brochure to Each Existing and New Tenant

- **First**, you must distribute the informational brochure to (i) all existing tenants, and (ii) all new tenants at the time each tenant executes the initial rental or lease agreement.
- **Second**, the informational brochure must be placed on every employee bulletin board or in employee handbooks, if they exist. This is to ensure employees in particular receive the warning.
- **Third**, by the end of each calendar year, you must mail one additional (1) informational brochure **via first class mail** to each individual apartment or dwelling unit. The mailed envelope **shall** be labeled: **TO ALL OCCUPANTS/GUESTS**. The brochure may be mailed with other materials, but the envelope must be addressed "TO ALL OCCUPANTS/GUESTS."

Pitfalls and Precautionary Notes:

1. Proposition 65 only applies to businesses with 10 or more employees. In many cases this means that a management company will have a duty to provide the warnings, while the owner of the property does not. If you are not sure whether an individual is an employee, please contact your attorney.
2. This form has been prepared by the California Apartment Association to help members comply with applicable California and Federal law. The California Apartment Association, its local Chapters, and Divisions do not make any representation or warranty about the legal sufficiency or effect of this form. Consult with an attorney if you require assistance in completing the form or to determine if use of the form is appropriate or changes to the form are necessary in any particular situation.
3. The California Apartment Association does not sanction any CAA form which has been altered or changed in any way.



WARNING

**This Area Contains
Chemicals Known To The
State Of California To
Cause Cancer and Birth Defects
Or Other Reproductive Harm.**

**More Information On Specific
Exposures Has Been Provided
To Tenants And Is Available At
www.prop65apt.org**