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**Re: Proposed Regulation: Title 27, Article 6, Clear and Reasonable Warnings, Section 25607.34 and 25607.35 Residential Rental Property 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 legislative, regulatory, judicial, and other forums.

CAA appreciates OEHHA's willingness to develop a safe harbor warning scheme that is appropriate and workable for the rental housing industry and believes that the proposed regulations come very close to achieving that goal. CAA's comments on the proposal appear below.

**Section 25607.34 (b) Residential Rental Property Exposure Warnings – Methods of Transmission**

Subsection (b)(1) requires warnings to be provided at the time of renting, leasing, letting or hiring out of the property, and annually to each known adult occupant. Several aspects of this section need clarification. Specifically, this subsection doesn't clearly state (1) to whom the adult occupant must be known or what constitutes knowledge; (2) whether providing a warning in the lease is sufficient to warn "known occupants" in addition to the tenants who will be signing the lease; (3) what "directly provide" means; (4) how to provide the warning to existing tenants prior to lease renewal; and (5) whether multiple copies of the warning must be provided in order to "directly" warn "each" occupant. The revised language proposed by CAA below addresses all of these issues.

**Known Occupants:** The presence of occupants whose status is unclear is a common occurrence at residential rental properties. A tenant may have a long-term guest, a new partner, or a caregiver and the property management company or property owner may be aware of that person, but not whether they are living full time at the property. This situation is compounded by the many local rent control and just-cause eviction ordinances that now give the tenant the right to move in adult relatives without the approval of the owner.[1] Also in many instances, maintenance staff or an employee that

[1] For example: Section 17.23.1250 of the San Jose Municipal Code prohibits an owner from evicting tenants who have allowed their spouse, domestic partner, or parents to move into the unit, regardless of whether those persons have applied or been approved by the landlord. The Cities of Mountain View, Richmond, and Alameda have similar provisions in their just-cause eviction ordinances.

resides on site may know that person is present, but may not be aware that they are not tenants. Another scenario, which is particularly common at smaller properties, such as single-family homes, is that the owner of the property (who may live nearby) may know a non-tenant is living there, but the property management company that has the duty to comply with Proposition 65 does not. It is unclear what level of knowledge, or suspicion – of an employee, agent or client of the business with the duty to warn – would transform the person into a "known" occupant. This could be resolved by adding a detailed definition of "known adult occupant," that specifies who must have knowledge and what circumstances constitute actual knowledge. CAA's proposed language, however, provides a simpler resolution of this and the other issues in this section. CAA's understanding is that the reference to "known adult occupants" appears because these are the individuals entitled to a Proposition 65 warning in residential rental housing – i.e., residents of the property (whether tenants or not) who are known to the business that has the duty to warn.

**Warning in Lease:** The confusion about whether a warning that appears in the original and/or renewal lease is sufficient to warn all known adult occupants results from inconsistency in the language used in subparts (b)(1) and (b)(2):

- Subpart (b)1) requires the warning to be "provided to each known adult occupant at the time of renting, leasing, letting or hiring out the property."

- Subpart (b)(2) requires the warning to be "provided annually directly to the known adult occupants of the property, in hard copy or electronic form or in each lease or rental agreement, renewal or amendment for the property."

The reference to the form of the warning (i.e., hard copy or electronic form or in each lease or rental agreement) should modify both the warnings provided at the inception of the tenancy and annually. CAA's understanding is that OEHHA intends a warning that is provided in the original lease and annually in the renewal lease to satisfy the "method of transmission" aspect of the residential rental property warning scheme with respect to all known adult occupants. Of course, if the warning is not included in the original rental agreement or annual renewal agreement, or if a unit is occupied without a written rental agreement (i.e., a tenant with an oral agreement) it would have to be otherwise provided, likely by mailing, hand delivery, or email. CAA's understanding of the intent of this provision is reflected in the proposed language below.

**Other Issues with the Method of Transmission:** CAA recommends that the word "directly" be deleted from (b)(2) and that the section instead specifically describe how the warning is to be provided. "Directly" suggests that something like personal service is required and stands out because the term is not used in (b)(1).

Many of CAA's members are likely to want to provide the new warnings to their existing tenants to meet the August 20, 2018, deadline, rather than wait for lease renewal. It is unclear how a landlord could take advantage of the safe harbor warning in that situation. This is, in part, due to the inconsistent use of the word "each" to modify "known adult occupant." While a warning could certainly be mailed to the unit, it is uncertain whether a single document, addressed to "all occupants" in a particular unit would

suffice, or whether a separate mailings or multiple documents in one envelope are required. Similarly, for the annual warning, if a tenancy is on a month-to-month basis, the owner may not provide an updated lease. In that case, is the mailing of a single warning document addressed to "all occupants" sufficient?

CAA proposes the following language to address the issues raised above:
**Proposed Replacement Section 25607.34(b)**
"A warning for exposures to listed chemicals at a residential rental property meets the requirements of this sub-article if it complies with the content requirements of Section 25607.3 and is provided to the known adult occupants (1) at the time of renting, leasing, letting or hiring out the property, and (2) annually. A warning is deemed 'provided to each known adult occupant' if it appears in any one of the following: (1) the lease or rental agreement; (2) a renewal lease or rental agreement, or an amendment thereof for the property; (3) a single hard copy that is mailed or delivered to the unit addressed to 'all occupants', or (4) an electronic form that is sent to an email address provided by a tenant of record."

**Section 25607.34 (c) Residential Rental Property Exposure Warnings – Methods of Transmission**

Subsection (c) provides that "If the lease, rental agreement, renewal, or amendment for the property or any other disclosures or required notices from the landlord to the tenant <u>are provided</u> to the occupants in any language other than English, the warning must be provided in that or those languages."
The inclusion of any "required notices" that "are provided… in any language other than English" as a trigger for translation results in an overbroad and unworkable translation requirement. CAA requests that this provision be revised to require a warning to be provided in a language other than English only when other documents <u>are required</u> to be provided in a language other than English by state law. At this time, the only state laws that require landlords to provide information or documents in languages other than English are Civil Code 1632 (translation of contracts)[2] and Health and Safety Code 13220 (emergency procedure information).[3] In general, these laws require the contract or information to be provided by the drafting party in Tagalog, Chinese, Spanish, or Vietnamese if the lease was negotiated in that language. CAA provides its rental/lease agreement and all lease addenda in Spanish to help its members who communicate in Spanish to comply with this requirement. CAA has not received any

[2] Civil Code Section 1632 (b) provides that "Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement:
…. (3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence."

[3] Health and Safety Code Section 13220 (b)(3): "If the owner or operator, or any individual acting on behalf of the owner or operator, of an apartment house, as described in this subdivision, negotiates a lease, sublease, rental contract, or other term of tenancy contract or agreement in any language other than English, the information required to be provided pursuant to paragraph (2) shall be provided in English, in international symbols, and in the four most common non-English languages spoken in California, as determined by the State Fire Marshal."

requests for lease documents in any other languages. CAA also makes available a tri-fold Emergency Procedure brochure developed with the State Fire Marshall to conveniently provide the emergency procedure information in four additional languages if the lease was negotiated in a language other than English.

The approach of these state laws is consistent with the approach OEHHA has taken for environmental exposures in the final Clear and Reasonable Warnings regulation (Title 27 CCR Section 25605). That regulation requires the safe harbor environmental warnings to be provided in "English and in any other language ordinarily used by the person to communicate with the public." It is reasonable to require a landlord to provide warnings in the language ordinarily used to communicate with tenants and applicants, for example when the lease is negotiated. However, requiring the landlord to provide Proposition 65 warnings in any language that happens to appear in a document that the landlord is required to distribute, is not.

Many cities in California have standard city-prepared notices that must be distributed by landlords or posted on the property that explain tenant rights under local ordinances. CAA is also tracking nearly a dozen new local rent control ballot initiatives that also would require such notices in various languages. The languages in these city notices are not co-extensive with those covered by state law. Some require only Spanish, or Spanish and Vietnamese. Some require additional or different languages. For example, San Francisco's required notices include Russian and Filipino."[4] In addition, these ordinances often empower the local rent board to add additional languages, as necessary based on the languages spoken in the community.[5] As more communities develop their own landlord/tenant ordinances and California becomes more diverse, the variety of languages included a city-provided tenant's rights documents is likely to increase. These local ordinances simply require a landlord whose property is subject to the ordinance to provide a standard notice available on the city's website to all tenants. The landlord is not required to answer questions or otherwise communicate in the languages in the city's notice.

These local government-prepared notices should not trigger a requirement to translate the Proposition 65 warning. Unlike the local rent boards, OEHHA's website does not provide a standard mandatory warning notices in multiple languages that can be printed on demand. While CAA can certainly obtain and provide for its members, translations of warnings regarding the most common sources of exposure and chemicals, (i.e., those provided as examples in the Initial Statement of Reasons) keeping up with the multiplicity of ever-changing local requirements and creating forms tailored to each situation is not feasible.

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[4] See http://sfrb.org/new-eviction-notice-requirements-november-9-2015. This link refers to Tagalog, while the referenced document at the link below, indicates that it is in Filipino. These two languages, while similar, are not the same – and in a technical translation, the distinctions may be significant. http://sfrb.org/sites/default/files/Document/Form/1007%20Notice%20to%20Tenant%20Req%27d%20by%2037.%209%28c%29-Eng-Sp-Ch-Viet-Rus-Tag.pdf

[5] CAA can provide OEHHA with additional information about these local ordinances upon request. One example is the City of Concord. See section 19.40.030 of the Concord Municipal Code requiring the mandatory "Notice of Availability of Rent Review" to be available in English, Spanish, and any other languages determined necessary by the City Manager.

Having a safe harbor that changes over time and is different from one city to the next makes compliance next to impossible and greatly increases the likelihood of litigation for CAA's members. Such a harbor is treacherous, rather than safe. Making the translation requirement consistent with other state requirements applicable to housing providers and with the new regulations for environmental exposures would provide residents with the information in a language they can understand, but without adding multiple pages of foreign language text to most rental agreements in California. The translation requirement should not be triggered by notices prepared by other entities for distribution by landlords. Instead, it should apply when an owner is required by state law to provide a translation of lease documents or when a foreign language is "ordinarily used by the person to communicate with the public." "Ordinarily" in this context would have its usual meaning[6], and not sweep in the occasional document that includes text in a foreign language. CAA has two proposed approaches to revising this subsection.

CAA proposes the following language to address the issues raised above:
**Proposed Replacement Section 25607.34(c)**
**Alternative #1**
"If the lease, rental agreement, renewal, or amendment thereof for the property or any other disclosures or required notices from the landlord to the tenant is required by State law to be provided to the occupants in any language other than English, the warning must be provided in that or those languages, in addition to English."

**Alternative #2**
"If a language other than English is ordinarily used by the person to communicate with applicants and tenants, for example to negotiate the rental agreement, the warning must be provided in that language in addition to English."

**Initial Statement of Reasons Section 25607.35 Residential Rental Property Exposure Warnings – Content**

The examples of warning text for exposures to listed chemicals at rental properties will help CAA to provide compliance guidance and materials for its members. They can be included rental agreements and CAA can obtain and provide translations for this text. Additional examples, if appropriate, would also be helpful. Some of CAA's members whose portfolios consist mostly of newer properties are concerned about having to provide a warning for each endpoint – i.e., a warning about a carcinogen and a warning about a reproductive toxin. While they would likely provide a warning regarding the carcinogen formaldehyde in building materials, there aren't sample warnings for exposure sources that have reproductive toxicity as the endpoint. CAA requests that OEHHA add any sample warnings for any additional exposures sources/endpoints that are appropriate.

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[6] I.e., "usually, normally, as a (general) rule, generally, in general, for the most part, mainly, mostly, most of the time, typically, habitually, commonly, routinely."

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
Vice President Compliance and Education