

SEPTEMBER 10, 2019

LAW ALERT

PROPOSITION 65 "SAFE HARBORS" NOW IN EFFECT FOR HOUSING PROVIDERS

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The Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65,¹ prohibits any "person in the course of business" from knowingly exposing any person to chemicals known by the State of California to cause cancer or reproductive toxicity without providing a "clear and reasonable warning."² A "person in the course of business" means any individual or entity other than a government agency with at least ten employees.³ A list of chemicals known by the State of California to cause cancer or reproductive harm is available here at the website of the Office of Environmental Health Hazard Assessment ("OEHHA").

To help businesses comply with the warning requirement, OEHHA regulations include "safe harbors" that describe the kind of warning that would constitute a "clear and reasonable warning" in different contexts. In March 2019, OEHHA filed regulations with the Secretary of State that took effect on July 1, 2019, describing the Proposition 65 warning that residential rental housing providers should provide tenants and other adult occupants.⁴

Like other Proposition 65 warnings under OEHHA's regulations, the warning for

residential rental housing providers must begin with the word "WARNING" in bold, capital letters, to the right of a hazard symbol of equal size.⁵ The hazard symbol consists of an exclamation mark in the middle of an equilateral triangle surrounded by a bold, black outline.⁶ Where the warning is in color, the triangle must be yellow.⁷ The content of the warning must appear below the word "WARNING" and hazard symbol.⁸ The regulations provide the exact language of the warning, and a typical warning in the case of a building with toxins known to cause both cancer and reproductive harm should read as follows:⁹

[Name of one or more exposure source(s)] on this property can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause cancer and [name of one or more chemicals] which is [are] known to the State of California to cause birth defects and other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to www.P65Warnings.ca.gov/apartments.

The warning must be provided to tenants and other adult occupants when they move into a

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

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¹ Health & Saf., §§ 25249.5-25249.14.

² See *id.* at § 25249.6. Note that in addition to requiring warnings, Proposition 65 also prohibits knowingly discharging chemicals on the Proposition 65 list into land or water where such chemicals will, or probably will, pass into any drinking water source. See *id.* at § 25249.5.

³ See *id.* at § 25249.11.

⁴ Cal. Code Regs., tit. 27, §§ 25607.34, 25607.35.

⁵ See *id.* at § 25607.35, citing *id.* at § 25603.

⁶ See *id.* at § 25603.

⁷ See *ibid.*

⁸ See *id.* at § 25607.35.

⁹ See *ibid.*

property, and must be given annually thereafter.¹⁰ The warning may be included in an original or renewed lease, but in that case will be deemed given only to the individuals who actually sign the lease, and not to other adult occupants.¹¹ The warning also may be emailed to tenants or other adult occupants at email addresses provided by those tenants or occupants if the housing provider uses the email address to communicate other information.¹² Finally, the warning may be given by letter addressed to each known occupant, or to "Tenants and Occupants" if the

names of all adult occupants are not known.¹³ In addition to this warning, a housing provider with an enclosed parking facility or with a designated smoking area must continue to provide notices for those facilities as described in OEHHA's regulations.¹⁴

For more information on Proposition 65, please contact Erik Ramakrishnan, Jennifer Bell, or any other Goldfarb & Lipman attorney at 510-836-6336.

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¹⁰ See *id.* at § 25607.34.

¹¹ See *ibid.*

¹² See *ibid.*

¹³ See *ibid.*

¹⁴ See *id.* at §§ 25607.20, 25607.21, 25607.28, 25607.29.