
New Proposition 65 Requirements for Residential Rental Properties

By Michael B. Sachs / Apr 22, 2019

California's Proposition 65 applies to any product sold in California and any location in the state. It requires that if the product or location contains one of over 900 potentially cancer causing or reproductive toxicant chemicals, a specific warning must be given to the purchaser of the product or persons on the premises. Liability for failure to provide the warnings includes both penalties and attorney fees.

In August 2018, California amended the Proposition 65 regulations to include a number of location-specific warnings – warnings that were required for specific locations instead of the “general” environmental warning. The Office of Environmental Health Hazard Assessment (OEHHA) has now further amended those regulations adding a new location specific warning for “Residential Rental Properties.” **This requirement becomes effective on July 1, 2019.** This update briefly discusses the proposed changes.

Specific Warning Requirements For Residential Rental Properties

The amendments require owners of residential rental properties to provide their tenants Proposition 65 warnings using specific language and in specific ways.

However, the definition of “residential rental property” is quite broad. It encompasses any “dwelling that a landlord rents to a tenant to live in, including common areas” other than a hotel.

Under the amendment, these residential properties need to use specific Proposition 65 warning language. While the precise language varies based upon the source of possible exposures, the chemical(s) at issue and the end point (cancer and/or reproductive harm) the chemical causes. But, as an example, for exposure to a single chemical that is both a carcinogen and a reproductive toxicant, the warning would be:



WARNING: [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 birth defects or other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to this chemical in your building. For additional information go to www.P65Warnings.ca.gov/apartments.

The amendment also directs a specific manner in which this warning must be provided. Rather than simply posting signs, the property owner has an affirmative duty to reach out to *each known adult occupant*, on a yearly basis, and provide the warning in hard copy, electronic form, or in the lease/rental agreement. Further, where the rental agreement is in multiple languages, the Proposition 65 warning must be provided in those languages.

The amendment also directs that rental property owners must provide the Proposition 65 warnings for enclosed parking facilities and designated smoking areas.

Conclusion

When this amendment goes into effect, it will require all residential rental property owners to change their current Proposition 65 warnings, change how those warnings are provided, and examine what additional Proposition 65 warnings must be provided.

Because these regulations, and the changes, are specific and technical, it is advisable that residential rental property owners consult with an attorney to ensure compliance with Proposition 65. Clark Hill's attorneys are experienced in Proposition 65 litigation and have worked with property owners to ensure compliance with Proposition 65 and to defend against any claims that are brought.