

Proposition 65 Warnings
This Probably Never Happened To You, But...
(#140)

Proposition 65 has not just “gone away”, and it would be unwise for a landlord to forget that it applies to all of us in the California Housing Industry.

As you may remember, the voters of the State of California passed this law back in 1986.
[http://en.wikipedia.org/wiki/California_Proposition_65_\(1986\)](http://en.wikipedia.org/wiki/California_Proposition_65_(1986))

On the ballot, the proposition was titled "The Safe Drinking Water and Toxic Enforcement Act of 1986", and who could be opposed to “safe water”, and who would not want “Toxic” substances closely controlled. This became a law of good intentions gone wrong.

The state was required to compile a list of all substances that might involve toxic elements. Within a few years, the list had grown to more than 550 chemicals, many of which would be found just in the air in-and-around your property. The chemicals would be found in car exhaust in your drive-way, if would be found in the smoke from one of your tenants grilling a steak on a barbeque, and it certainly would be found if someone on your property was smoking a cigarette.

So, the simple fact is that these toxic substances are on your property. And you therefore must warn your tenants of the potential risk. You’re not alone. If you have been attentive, you’ve probably seen these Proposition 65 warnings in many, many places: restaurants, hardware stores, markets, and (of course) gas stations.

It’s not that hard to comply, so we just do. In several ways. When our new tenants move-in, they are asked to sign a copy of the warning notice. We treat this just like the other warnings for Lead Hazards, Mold, and Megan’s List. When we are doing the “make-over” of our vacated units, we post the warnings in the cabinet under the kitchen sink and in the water-heater closet. We also post the notices in several places in the car-ports or garages.

Having to post these notices is not a choice. The potential exposure for not posting them makes it a necessity. The potential fine for not warning your tenants can be a whopping \$2,500 per day for each day in which notice was not given. Granted, the abuses of this law by unscrupulous lawyers has largely faded, but the law is still there, and still enforceable.

The language we use on our signs is on the following page. Please, post the notices, give out the warnings. It’s just smart.

The following is what is printed on our notices, in 20 point bold type.

The warning notices are printed on 5 ½ x 8 ½ card-stock:

YOU HAVE PROBABLY SEEN THESE SIGNS IN MOST STORES AND RESTAURANTS. WE MUST POST THEM ALSO.

EVEN CAR EXHAUST FROM THE STREET CAN CONTAIN SOME OF THE CHEMICAL SUBSTANCES COVERED BY THIS LAW. WE ARE REQUIRED TO GIVE YOU THE FOLLOWING NOTICE

TOXIC SUBSTANCE
WARNING NOTICE

THIS AREA CONTAINS CHEMICAL SUBSTANCES KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, REPRODUCTIVE TOXICITY, BIRTH DEFECTS AND/OR OTHER REPRODUCTIVE HARM.

California Code of Regulations

Title 22, Section 12601

Dear Readers:

This article is the 140th in a series based on the lessons we have learned the hard way. The contents of these articles are merely opinions of the writer. They are not intended as specific legal advice and should not be relied upon for that purpose. Our practice is in constant refinement as we adjust the way we operate to an ever-changing market. I appreciate your questions, comments, suggestions, and solutions. Contact C. Finley Beven, CPM, CCAM, JD. 99 S. Lake Avenue, Pasadena. (626) 243-4145. FinBeven@MSN.com