

MEMORANDUM

DATE: March 21, 2014
TO: OnMyBlock, Inc.
FROM: Kevin Rose
REGARDING: Residential Lease Disclosure Requirements
OUR FILE NO.: 7986.01

California

Lessors of real property in California are statutorily required to disclose the following information to prospective lessees prior to the lessee signing the rental agreement.

a. Identification of Landlord or Manager – Cal. Civ. Code §§ 1962 and 1962.7

At the inception of tenancy or whenever there is a new owner or new manager, the landlord or person signing the rental agreement must (1) disclose the name, telephone number, and address for receipt of notices for the manager and, additionally, for either the owner or person authorized to act on behalf of the owner to receive notices, (2) disclose the name, telephone number, and address for the person to whom rent is paid, (3) disclose the form in which rent must be paid, and (4) provide a copy of the rental agreement within fifteen (15) days after signing. Any successor owner or manager must keep information current and comply with the above requirements within fifteen (15) days after succeeding the previous owner or manager.

b. Material Facts Affecting Value or Desirability of Premises – Civ. Code § 2079

Lessors owe a duty to disclose to prospective lessees any characteristics or conditions of the rental premises that are known or accessible only to the landlord which materially affect the value or desirability of the premises in light of the lessee's intended and disclosed use. Lessees who suffer damage by a breach of this duty may have a damages cause of action against their lessor for fraud.

c. Death of Previous Occupant – Civ. Code § 1710.2

Lessors have no liability for not disclosing the fact of any death of an occupant that occurred more than three (3) years prior to the date the prospective lessee offers to lease the property. Any death which has occurred within a 3-year period should be disclosed if deemed to be "material." Affliction with AIDS or death from AIDS, no matter when it occurred, need not be voluntarily

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disclosed. Lessors may not make an intentional misrepresentation in response to a direct question concerning deaths on the property. Lessors may simply refuse to answer a question (about AIDS or HIV) indicating that any such information, if known, is confidential and private.

d. Megan's Law Notice

Lessors must include the following language, in at least 8-point type, in rental agreements:

Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

e. Hazardous Substances

i. Lead Warning Statement and Disclosure – 24 CFR § 35.92(b)

Each contract to lease target housing (residential properties constructed before 1978) shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

- A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

- A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

- A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.
- A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

Certain pre-1978 housing is exempt from the disclosure/warning requirements: e.g., housing for the elderly or disabled persons (unless any child under age six resides or is expected to reside in the housing); and 0-bedroom dwellings (any residential unit in which the living area is not separated from the sleeping area – such as studio apartments, dormitory housing, etc.) [42 USC 4851(b)(27); 24 CFR § 35.86] Additionally, certain transactions to sell or lease target housing are exempt, including leases where a certified inspector has found the housing to be lead-based paint free; short-term leases not exceeding 100 days if no renewal or extension can occur; and renewals of existing leases in target housing where the landlord previously disclosed all information to the tenant and no new information is known to the landlord. [24 CFR § 35.82(b), (c), (d)]

ii. Toxic Mold – Health & Safety Code §§ 26147, 26148

Prior to signing a rental agreement, the lessor must provide written disclosure when the lessor knows, or has reason to know, that mold, both visible and invisible or hidden, is present that affects the unit or the building and the mold either exceeds the permissible exposure limits to molds established by subdivisions (a), (b), and (c) of Section 26103 or poses a health threat according to the Department's guidelines as developed pursuant to Section 26105.

Lessors must distribute a consumer handbook developed by the State Department of Health Services that describes the potential health risks and the health impact that may result from exposure to mold

f. Pest Control Service – Civ. Code § 1940.8; Bus. & Prof. Code § 8538

The lessor of a residential dwelling unit shall provide each new lessee that occupies the unit with a copy of the notice provided by a registered structural pest control company, if a contract for periodic pest control service has been executed. The notice shall describe the pest to be controlled, pesticides used and their active ingredients, a warning that pesticides are toxic, and the frequency of treatment under any contract for periodic service.

g. Gas and Electric Meters Serving Common Areas – Civ. Code § 1940.9

If the lessor does not provide separate gas and electric meters for each lessee's dwelling unit so that each lessee's meter measures only the electric or gas service to that lessee's dwelling unit and

the lessor or his or her agent has knowledge that gas or electric service provided through a tenant's meter serves an area outside the tenant's dwelling unit, the lessor, prior to the inception of the tenancy or upon discovery, shall explicitly disclose that condition to the tenant and shall do either of the following:

- Execute a mutual written agreement with the tenant for payment by the tenant of the cost of the gas or electric service provided through the lessee's meter to serve areas outside the tenant's dwelling unit, or
- Make other arrangements, as are mutually agreed in writing, for payment for the gas or electric service provided through the lessee's meter to serve areas outside the lessee's dwelling unit. These arrangements may include, but are not limited to, the landlord becoming the customer of record for the lessee's meter, or the lessor separately metering and becoming the customer of record for the area outside the tenant's dwelling unit.

h. Intent to Demolish Rental Unit – Civ. Code § 1940.6

Lessors or their agents who have applied for a permit to demolish a residential dwelling must give written notice thereof to prospective lessees, prior to entering into a rental agreement with the prospective lessee, requiring or accepting payment from the prospective lessee for an application screening fee, requiring or accepting any other fees from the prospective lessee, and requiring or accepting any writings that would initiate a tenancy.

i. Condominium Conversion Notice – Gov. Code § 66459

If a final map has been approved for a condominium project, community apartment project, or stock cooperative project, and the subdivider or subsequent owner of the project, on or after January 1, 1993, rents a dwelling in that project, he or she shall, prior to offering the separate interest for sale to the general public, deliver the following notice, printed in at least 14-point bold print, prior to the execution of the rental agreement:

TO THE PROSPECTIVE TENANTS OF [address]: The unit you may rent has been approved for sale to the public as a condominium project, community apartment project or stock cooperative project (whichever applies). The rental unit may be sold to the public, and, if it is offered for sale, your lease may be terminated. You will be notified at least 90 days prior to any offering to sell. If you still lawfully reside in the unit, you will be given a right of first refusal to purchase the unit.

Any lessee of a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given at least 90 days' written notice of the intention to sell the rental unit to the general public. Any lessee who lawfully resides in a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given a

right of first refusal by the subdivider or subsequent owner of the project for the purchase of his or her rental unit upon the same terms and conditions that the unit will be initially offered to the general public or terms and conditions more favorable to the tenant. This right to purchase shall run for a period of 90 days from the date of the notice, unless the tenant gives written notice within the 90-day period of his or her intention not to exercise that right.

j. Known Ordinance Locations – Civ. Code § 1940.7

The lessor of a residential dwelling unit who has actual knowledge of any former federal or state ordinance locations in the neighborhood area (i.e., within one mile of the residential dwelling) shall give written notice to a prospective lessee of that knowledge prior to execution of a rental agreement.

k. Remediation Order for Property Contaminated by Methamphetamine Laboratory

A property owner who has received notice from the local health officer prohibiting use or occupancy of the property due to methamphetamine laboratory activity and requiring decontamination must give written notice thereof to prospective lessees who have completed a rental application for the affected unit of property.

l. Notice of “Adverse Action” Based on Use of Consumer Report – Code § 1785.20(a)

Residential lessors are required to provide rental applicants and lessees with an “adverse action notice” whenever information obtained by the lessor from a consumer report contributes to the lessor’s decision to deny a rental application or place other restrictions on a lessee’s rental terms. The “adverse action notice” must include the name, address and telephone number of the consumer reporting agency that provided the report to the lessor and notice of the applicant’s right to dispute the accuracy or completeness of the information furnished by the agency and right to a free report from the agency upon request within 60 days.

m. Prohibition of Smoking – Civ. Code § 1947.5

Every lease or rental agreement entered into on or after January 1, 2012, for a residential dwelling unit on property on any portion of which the landlord has prohibited the smoking of cigarettes or other tobacco products pursuant to this article shall include a provision that specifies the areas on the property where smoking is prohibited, if the lessee has not previously occupied the dwelling unit.

San Francisco

Certain information must be disclosed to the tenant in writing, whether the lease is oral or written. Landlords must disclose:

- The name, telephone number and address of any person authorized to manage the premises and/or act on behalf of the landlord for purposes of receiving rent, service of process, notices and demands; and
- Whether rent payments are to be in cash, by personal check, money order, cashier's check or through an electronic funds transfer procedure. A landlord is prohibited from requiring cash as the sole form of payment for rent and may only demand cash if the tenant bounced a check in the previous three months.

The San Francisco Board of Supervisors recently amended the San Francisco Health Code by adding Article 19M, a Tobacco Smoke Disclosure, where less than 100% of the units in an apartment building are designated as smoke free. San Francisco's Tobacco Smoke Disclosure Policy, which became effective on December 31, 2013, is designed to alert prospective tenants that there could be tobacco smoke drifting from another apartment in the building. An owner or manager ("landlord") of a Multi-Unit Housing Complex with less than 100% smoke free residential rental units shall:

- Designate each residential unit as either smoke free or smoking optional, using the process and timeline provided in Section 19M.3 "Procedure for Designation of Residential Units as Smoke Free or Smoking Optional";
- Include in residential vacancy listings the unit designation as smoke free or smoking optional;
- Provide a residential rental applicant with a list showing the designation of units in the building that are smoking optional, before offering a unit to that applicant;
- Disclose in writing to any residential rental applicant whether the landlord has designated the unit for rent as a smoke free unit or as a smoking optional unit, before entering into the new lease or rental agreement; and
- Develop and maintain a master list for tenants that identifies the location of each smoking optional unit. Notify tenants that this master list is available upon request in the leasing office or from building management.