



CHILD CARE LAW CENTER

221 PINE STREET | 3RD FLOOR | SAN FRANCISCO, CA 94104 | V 415.394.7144 | F 415.394.7140
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

Questions & Answers About Family Child Care FOR CALIFORNIA LANDLORDS

1. Does a tenant have to tell a landlord that he or she is doing family child care?

Yes, a tenant is required to give the landlord notice of the operation or the intended operation of family child care on the premises.¹

2. Does a tenant need permission from a landlord to do family child care?

No, not if the tenant is caring for 6 children in a small family child care home or 12 children in a large family child care home.² California law *explicitly* allows a tenant licensed as a small family child care provider to care for up to 6 children and a large family child care provider to care for up to 12 (including her own children under the age of ten) *without the permission of the landlord*.³

But if a tenant wants to exercise her *plus two* option – which allows a small family day care provider to care for 8 children⁴ and a large family day care provider to care for 14⁵, if the 2 additional children are school-age – the tenant *would* have to get the landlord's permission. For example, a landlord can choose whether or not to permit the expansion of a small family child care home from 6 to 8 children, but *not* whether the tenant can provide child care for up to 6 children.

3. Can a landlord prohibit family child care in a tenant's home?

No. Some landlords may tell their tenants that family child care is not permitted on the property. However, landlords have no authority to do this in California. **It is illegal in California for a landlord to try to**

prohibit a tenant from operating a licensed family child care program in a rental unit or to attempt to evict a tenant who tries to do so.⁶

While a landlord may have some questions and concerns about the effect of operating a family child care home on the property, none of these concerns can legally justify requiring the tenant to terminate the family child care program. The following questions and answers address some of the difficulties encountered between landlords and tenants who are family child care providers, and offer some suggestions on how to handle some of the more common conflicts and concerns.

4. Is the operation of a family child care home a “business” use of property?

No. California state law requires that a licensed family child care provider care for children in his or her own home.⁷ There is no requirement, however, that a provider own the home to get a license.⁸ Another law, also found in the Health and Safety Code, prohibits any restrictions or conditions that limit the use of a residence as a family child care home.⁹ Even if a rental agreement or lease says the apartment or home is to be used only as a residence, that statement cannot be used to prohibit family child care. In California, family child care is legally considered a residential use of property, not a business use.¹⁰ Thus, if a lease or rental agreement says that the apartment or home cannot be used as a place of business, that statement cannot be used to prohibit licensed family child care.

Some landlords argue that the operation of a family child care home on the premises is a commercial activity for which the premises is not intended. The law is clear that the use of the premises for family child care does not change the residential nature of the use. The Health and Safety Code states:

Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses.¹¹

5. May a tenant operate a family child care center in any type of rental unit?

Yes. A tenant may operate a family child care home in any dwelling in which they reside, such as a single family house or an apartment in a multi-unit dwelling. Tenants receive the same protection under law, regardless of which type of unit they rent.¹² Landlords need not be concerned whether the unit is appropriate for child care, because the Community Care Licensing Division will make that determination and periodically inspect the site.¹³ “[F]amily day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development.”¹⁴

6. May a landlord require a family child care provider to carry liability insurance?

No. The landlord may be concerned about his or her liability if, for example, a child is injured while in the child care home. Landlords should know that tenants may voluntarily purchase liability insurance for the program. However, the law does not require a program to have liability insurance in order to operate, and a landlord can not require the tenant to obtain child care liability insurance as a condition of renting the property.¹⁵

If the provider chooses not to get liability insurance or purchase a bond, the parents of the children in care must sign an affidavit provided by Community Care Licensing indicating they are aware that the program does not have liability insurance.¹⁶ In the case of a provider in rental housing, the affidavit must also state that any liability insurance held by the landlord may not cover losses arising out of the operation of the family child care home. Having the signed affidavits does not limit the provider’s liability.

On the other hand, if the tenant has liability insurance, then the landlord may ask the tenant to add the landlord as an additional, named insured on the policy. A family child care provider who resides in rental property is required to name the property owner as an additional insured on any policy the tenant may have *if* the property owner makes a written request.¹⁷ However, the addition of the landlord’s name must not result in a cancellation or non-renewal of the policy, and any additional premium must be paid by the property owner.¹⁸

7. Will the operation of a family child care home negatively impact a landlord’s insurance coverage?

No. Some landlords are concerned that they will lose their insurance coverage if their tenants operate family child care homes. However, insurers may not cancel or not renew insurance policies because of the operation of a family child care home on the premises.¹⁹

8. Can a landlord evict a tenant for operating a family child care home?

No. A landlord may not evict a tenant *solely* for operating a family child care home.²⁰ However, these protections do not prevent the landlord from evicting a tenant for any other valid reason, such as a failure to pay rent, if the landlord is moving into the rental unit, or a violation of the terms of the lease.

9. Can a landlord raise the rent because a tenant is providing family child care?

No. Landlords may not charge additional rent simply because a tenant operates a family child care program. Such increases constitute “source of income” discrimination and are violations of California’s Fair Housing and Employment Act.²¹ Any rent increases must fall within amounts permitted under state and local rent control laws.

10. What about disturbing neighbors, wear and tear to property, and increased operation costs?

Landlords often confuse a family child care home with a child care center. They have visions of streams of children disturbing other tenants and running about in the home or yard. The landlord should remember that the operation of a family child care home is not a child care center, and that the license limits the number of children in care. The tenant is a licensed provider who is required to constantly supervise the small number of children in his or her care.²² Tenants who are family child care providers tend to be very interested in protecting the neighborhood as an attractive site for parents to leave their children and in maintaining good relations with neighbors. Thus, they tend to be good tenants.

Many providers will include something in the child care policies distributed to parents about the need to be respectful of neighbors when dropping off and picking up children. Most child care providers will plan activities for the children which consider and respect the needs of other tenants.

Under state law, a landlord may not limit the hours that care is provided.²³ For example, the provider is free to decide whether or not to provide evening or weekend care. The flexibility of the program and the small group

size are just a few of the factors that parents look for in family child care.

Landlords are occasionally concerned about increased costs which may result from the use of utilities, water, power, or additional garbage generated by the family child care home. In actuality, the amount of increased energy a family child care home uses is usually negligible. Providers normally do not bathe the children in their care, nor wash their clothes and most providers do not prepare cooked meals for the children. While the provider is under no legal obligation to cover these added costs, the provider may offer to meet any increased costs or share them with the landlord. Many providers learn about and practice water and energy conservation and recycling to demonstrate concern for these issues.

Landlords may be concerned about additional wear and tear on the home. Most tenants are also interested in taking care of the home because, again, they want their home to be attractive to parents and safe for children. However, tenants are not expected to live in a home without some amount of wear and tear. If a tenant pays a security deposit, those funds may be used specifically for repairs beyond normal wear and tear or cleaning, should they be necessary when the tenant moves. A landlord may require a reasonable security deposit, but it can not be more than two months rent on an unfurnished home, whether it is called a cleaning deposit or security deposit.²⁴

Family child care providers strive to offer a safe and well-maintained environment for children, in compliance with the licensing regulations. Repairs are important, especially if the health or safety of children in care is threatened. In fact, prompt repairs by the landlord will reduce the risk of liability for both the landlord *and* the tenant.

This document is intended to provide general information about the topic covered and is made available with the understanding that it does not render legal or other professional advice. We believe it is accurate as of June 2009, but the law changes often. If you need legal advice, seek help from a competent attorney.

Useful Resources

- Call your **County Bar Association Lawyer Referral Service** to find a private attorney. The number is listed in your telephone book, or visit the California Bar Association website at www.calbar.org to find the county bar association near you.

The following is a list of the resources and laws cited in this article.

¹ CAL. HEALTH & SAFETY CODE § 1597.44(d).

² CAL. HEALTH & SAFETY CODE § 1597.44(b).

³ CAL. HEALTH & SAFETY CODE § 1597.44(b).

⁴ CAL. HEALTH & SAFETY CODE § 1597.44.

⁵ CAL. HEALTH & SAFETY CODE § 1597.465.

⁶ CAL. HEALTH & SAFETY CODE § 1597.40(b).

⁷ CAL. HEALTH & SAFETY CODE § 1597.40.

⁸ CAL. HEALTH & SAFETY CODE § 1596.78.

⁹ CAL. HEALTH & SAFETY CODE § 1597.40.

¹⁰ CAL. HEALTH & SAFETY CODE § 1597.43(a).

¹¹ § 1597.43(a).

¹² Statutory language, legislative history and public policy considerations all support a reading that the Health and Safety Code protects tenants operating out of single family houses and multi-unit dwellings equally. *Morrison v. Vineyard Creek, L.P. et al.*, contact Child Care Law Center for details of the settlement.

¹³ CAL. HEALTH & SAFETY CODE §§ 1597.54; 1597.55a.

¹⁴ CAL. HEALTH & SAFETY CODE § 1597.40(a).

¹⁵ CAL. HEALTH & SAFETY CODE § 1597.531.

¹⁶ CAL. HEALTH & SAFETY CODE § 1597.531(a).

¹⁷ CAL. HEALTH & SAFETY CODE § 1597.531.

¹⁸ CAL. HEALTH & SAFETY CODE § 1597.531.

¹⁹ CAL. HEALTH & SAFETY CODE § 1942.5 (prohibiting placing restrictions on the use of dwellings for family child care homes); CAL. GOV'T CODE § 12955 (prohibiting creating a disparate negative impact on women and families with children); CAL. INS. CODE §§ 676, 676.1 (prohibiting insurance companies from cancelling certain types of policies except in specified circumstances, or cancelling or failing to renew a homeowners insurance policy because of the operation of family child care on the property).

²⁰ CAL. HEALTH AND SAFETY CODE § 1597.40(b); CAL. CIV. CODE § 1942.5(c) (rendering eviction or threats of eviction for the purpose of retaliating against a lessee for the lawful and peaceable exercise of any right under law illegal).

²¹ CAL. GOV'T CODE § 12955. "Source of income" is defined as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant"; licensed family child care is a lawful source of income because it is paid directly to the child care provider in exchange for her care of children. *Id.*

²² CAL. HEALTH & SAFETY CODE § 1597.62(2).

²³ CAL. HEALTH & SAFETY CODE § 1597.40(b).

²⁴ CAL. CIV. CODE § 1950.5(c).