



CHILD CARE LAW CENTER

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Your Rights and Responsibilities: Family Child Care Homes in Rental Property in California

A “Family Child Care Home” is a child care setting in which the state licenses a child care provider to care for a small number of children in his or her own home. Family child care providers are regulated and must comply with health and safety standards. Parents often choose family child care because of its home-like atmosphere, flexible hours and proximity to their work or homes. Currently, about one-third of the children cared for in licensed child care settings in California are in family child care homes, making family child care a common and important source of licensed child care in California.¹

Because family child care is so important to California’s families, the state has enacted several laws that protect the right to provide licensed family child care in rental property. This article answers many of the common questions about these rules and laws.

I RENT MY HOME IN CALIFORNIA. MAY MY LANDLORD STOP ME FROM PROVIDING LICENSED FAMILY CHILD CARE?

No. Your landlord *cannot* stop you from providing family child care if you care for **six** or fewer children in a small family child care or **twelve** or fewer children in a large family child care.² A tenant may operate a family child care home in any dwelling in which they reside. Tenants receive the same protection under law, regardless of which type of unit they rent (e.g. a single family home, an apartment in a multi-unit dwelling, etc.).³ Even if your lease says “No businesses” or “No commercial uses,” those provisions are void if the landlord tries to use them to stop you from running a family child care home of these sizes.⁴ In California, family child care is legally considered a residential use of property, not a business use.⁵

In addition, a landlord may not limit the hours that care is provided.⁶ For example, the provider is free to decide whether or not to provide evening or weekend care.

MAY MY LANDLORD LIMIT THE NUMBER OF CHILDREN I CARE FOR?

Yes. You have to get **written permission** from your landlord if you want to care for more than six children in a small family child care or more than twelve children in a large family child care.⁷

You can get a license to care for up to eight children in a small family child care home.⁸ However, if you want to care for more than six children (either seven or eight children), you must get written permission from your landlord for the additional two children.⁹

If you have a large family child care home, you can get a license for up to fourteen children.¹⁰ However, if you want to care for more than twelve children (either thirteen or fourteen children), you must get written permission for the additional two children.¹¹

If your landlord will not give you permission for the additional children, you can still care for six children with a small family child care license or twelve children with a large family child care license.

DO I HAVE TO TELL MY LANDLORD ABOUT MY FAMILY CHILD CARE HOME?

Yes. No matter how many children you care for, you are required by law to **inform** your landlord that you are operating, or are going to operate, a family child care home.¹² You do not need to ask your

landlord for permission; rather, you just have to tell your landlord that you will be providing licensed family child care. Attached to this article you will find a Department of Social Services form you can use to inform your landlord.

Must <i>Inform</i> Landlord about operation of Family Child Care	Must Also Get Landlord's <i>Permission</i> for Additional Children
All Small Family Child Care Homes	Small Family Child Care with 7 or 8 children
All Large Family Child Care Homes	Large Family Child Care with 13 or 14 children

WHEN DO I HAVE TO TELL MY LANDLORD ABOUT MY FAMILY CHILD CARE HOME?

- *If you are about to open a family child care home, you must tell your landlord **30 days** before you start providing child care.*¹³
- *If you already have a family child care home, but you are moving to a new house or apartment, ask your licensing analyst when you have to tell your landlord. Sometimes the amount of time required for the notice can be shortened because it might take less than 30 days to transfer your license to the new home.*¹⁴
- *If you already have a family child care home, but have never told your landlord, you are required to give notice immediately.*¹⁵

MAY MY LANDLORD EVICT ME FOR HAVING A FAMILY CHILD CARE HOME?

No. As discussed above, your landlord cannot stop you from providing licensed family child care for six or twelve children, which also means that he or she cannot evict you for providing licensed child care.¹⁶ However, family child care providers should be extra careful to comply with all of the other provisions in their lease, because a landlord still can evict you for other reasons, like failure to pay rent on time, if the landlord's family is moving into the rental unit or a violation of the terms of the lease.

In cities that do not have eviction-control ordinances, a landlord can evict a tenant without any reason by giving a proper thirty-day notice at the end of the lease term. However, a landlord cannot pretend that they are using a "no-cause" eviction if the real reason for the eviction is because the tenant is a family child care provider.

MAY MY LANDLORD RAISE MY RENT BECAUSE I HAVE A FAMILY CHILD CARE HOME?

No. The landlord may raise your rent for other reasons, but he or she may not charge you extra rent because you operate a family child care home.¹⁷ Such increases constitute "source of income" discrimination and are violations of California's Fair Housing and Employment Act.¹⁸ Such increases may also violate fair housing laws by creating a negative disparate impact on women and families.¹⁹ In addition, any increase in the rent must comply with local rent control laws.

MAY MY LANDLORD REQUIRE A LARGER SECURITY DEPOSIT FROM A FAMILY CHILD CARE PROVIDER THAN HE OR SHE DOES FROM OTHER TENANTS?

Yes. Landlords may charge the maximum security deposit to a family child care provider, even if they do not charge other tenants the maximum amount. The landlord can charge this increased security deposit "upon commencement of, or knowledge of, the operation of a family [child] care home on his or her property."²⁰ The maximum amount a landlord can charge a tenant is two months rent for an unfurnished unit or three months rent for a furnished unit (in addition to the first month of rent).²¹

CAN MY LANDLORD REQUIRE ME TO GET AN INSURANCE POLICY?

No. Since landlords cannot put restrictions on family child care homes, your landlord cannot require you to get liability insurance for your family child care home.²² While the Child Care Law Center highly recommends that you get liability insurance for your family child care, it is not required, and you can choose not to.²³ A homeowner's insurance policy does not cover liability from family child care homes; a separate policy or endorsement is needed to cover the operation of a family child care home.²⁴ If your landlord is concerned that his or her insurer will cancel or fail to renew their policy because family child care is being operated on the premises, you may inform them that the law prevents the insurer from doing so.²⁵

CAN MY LANDLORD REQUIRE ME TO ADD HIM OR HER TO MY EXISTING INSURANCE POLICY?

Yes. However, you only have to add your landlord to your family child care liability insurance policy if all of the following conditions are met:

- you already have or are getting a liability insurance policy;
- your landlord requests to be added to your policy in writing;
- your policy will not be cancelled because you added your landlord; and,
- your landlord pays any premium for the additional coverage.²⁶

HOW DO I MAKE MY BUSINESS WELCOME IN THE NEIGHBORHOOD AND FOSTER GOOD RELATIONS WITH MY LANDLORD?

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. However, family child care providers tend to be very good tenants. You may want to explain to the landlord the nature of your operation:

- *Noise.* If they worry about noise, offer to keep the children indoors during the morning and evening. Also, inform them that the license limits the number of children in care.
- *Lack of supervision.* Children are less likely to be unsupervised in family child care. As a licensed provider, the tenant is required to constantly supervise the small number of children in her care.²⁷
- *Traffic.* Explain that there are few families in the program and offer to stagger pickup and drop off times.
- *Increased costs.* Explain that there will not likely be increased water or energy use because the children are not being bathed and meals are not prepared for them. Also, offer to observe conservation.
- *Wear and tear on the property.* Explain that tenants must take good care of the home because they want it to be an attractive and safe environment, and they are subject to Licensing Board inspections. If there is excessive wear or tear the security deposit may be used, when the tenant moves.

WHAT CAN I DO IF MY LANDLORD TRIES TO EVICT ME OR RAISE MY RENT EVEN THOUGH IT IS AGAINST THE LAW?

- Save copies of all letters, notes and notices. Keep a log with the date and description of all conversations you have with your landlord.
- Check all notices and papers for deadlines. You usually must respond very quickly to eviction notices or court papers. An eviction notice with a three day deadline means that your landlord could file a case to evict you after three days if the problem is not resolved. Court papers that say that the landlord filed an "Unlawful Detainer" (eviction) against you must be answered within five days.
- It is always a good idea to consult with a lawyer before you respond to your landlord.
- If you contest an eviction, continue to pay rent or keep the money in a separate bank account.

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 **Legal Aid or Legal Services** if you are a low-income tenant and you have received a notice of eviction or illegal rent increase from your landlord.
- 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.
- Call the **Child Care Law Center** for more information. However, the Child Care Law Center cannot provide individual legal representation.

The following is a list of the resources and laws cited in this article. You will find a copy of the California Health and Safety Code sections attached to this document.

¹ See NATIONAL ASSOCIATION OF CHILD CARE RESOURCE AND REFERRAL AGENCIES, 2009 CHILD CARE IN THE STATE OF: CALIFORNIA 1–2 (2009), available at <http://www.naccrra.org/randd/data/docs/CA.pdf>.

² CAL. HEALTH & SAFETY CODE § 1597.40(b).

³ 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.

⁴ CAL. HEALTH & SAFETY CODE § 1597.40(b).

⁵ CAL. HEALTH & SAFETY CODE § 1597.43(a).

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

⁷ CAL. HEALTH & SAFETY CODE §§ 1597.44(d); 1597.465(d).

⁸ CAL. HEALTH & SAFETY CODE § 1597.44.

⁹ CAL. HEALTH & SAFETY CODE § 1597.44(d).

¹⁰ CAL. HEALTH & SAFETY CODE § 1597.465.

¹¹ CAL. HEALTH & SAFETY CODE § 1597.465(d).

¹² CAL. HEALTH & SAFETY CODE § 1597.40(d).

¹³ CAL. HEALTH AND SAFETY CODE § 1597.40(d)(1).

¹⁴ CAL. HEALTH AND SAFETY CODE § 1597.40(d)(2).

¹⁵ CAL. HEALTH AND SAFETY CODE § 1597.40(d)(3).

¹⁶ 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).

¹⁷ CAL. CIVIL CODE § 1942.5(c) (rendering increases in rent for the purpose of retaliating against a lessee for the lawful and peaceable exercise of any right under law illegal.)

¹⁸ 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.*

¹⁹ CAL. GOV'T CODE § 12955.

²⁰ CAL. HEALTH AND SAFETY CODE § 1597.40(d)(4).

²¹ CAL. CIVIL CODE § 1950.5(c).

²² CAL. HEALTH & SAFETY CODE § 1597.40(b).

²³ CAL. HEALTH & SAFETY CODE § 1597.531(a).

²⁴ CAL. INS. CODE § 676.1(a) (declaring it to be against public policy for a residential property insurance policy to provide liability coverage for losses arising out of, or in connection with, the operation of a family childcare home).

²⁵ 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).

²⁶ CAL. HEALTH & SAFETY CODE § 1597.531(b).

²⁷ CAL. HEALTH & SAFETY CODE § 1597.62(2).