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221 PINE STREET, 3<sup>RD</sup> FLOOR ♦ SAN FRANCISCO ♦ CALIFORNIA 94104  
TELEPHONE: 415.394.7144 ♦ FAX: 415.394.7140 ♦ E-MAIL: [INFO@CHILDCARELAW.ORG](mailto:INFO@CHILDCARELAW.ORG)

## LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS IN CALIFORNIA: LIABILITY AND INSURANCE

**By the Staff of the Child Care Law Center**

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## INTRODUCTION

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Family child care providers in California care for a small number of children in the providers' own homes. Small family child care providers may care for more than six (6) and up to eight (8) children, and large family child care providers may care for more than twelve (12) and up to fourteen (14) children.<sup>1</sup>

Child care providers enter this profession because they care about children. It can be difficult and unpleasant to think about children getting hurt, particularly where a child care provider could be blamed for the harm. However, child care providers constantly face exposure to liability, so it is important for you to think about this issue, to take measures to keep children from being injured while they are in your care, and to reduce the possibility that you may be sued. Maintaining a good safety program, following applicable licensing requirements, and purchasing insurance are important preventive measures for you to take.

This article discusses liability insurance for child care programs: how it works, what types of coverage are available, and how to decide what coverage you need. It also discusses other ways to cover your liability. These other methods include homesteading your home, purchasing a bond, and contracting with parents to limit your liability.

### WHY DO I NEED TO PROTECT MYSELF AGAINST LIABILITY?

Child care providers have a legal duty to act with reasonable care while supervising the children in their custody.<sup>2</sup> Providers have this duty because of child care licensing laws and because their position as caregivers to children creates a special relationship of dependency and reliance.<sup>3</sup> When a child is injured because a provider fails to use reasonable care, the provider is said to have "breached his/her duty of care," or "acted negligently."<sup>4</sup>

### HOW DOES LIABILITY INSURANCE WORK?

If a child is injured while in your care, the parents might sue you if they think your negligence, or that of your assistant, caused the injury. If you have general liability insurance, the insurance company will defend you if you are sued.<sup>5</sup> If the court decides that you are "liable" (meaning that *your* negligence caused the child's injury and therefore you should pay compensation), the insurance company will pay any money judgment up to the limits of your liability policy.<sup>6</sup>

### DO I HAVE TO BUY LIABILITY INSURANCE?

No, but it is the best way to protect yourself. California law gives family child care providers three ways to protect themselves from liability claims for accidents or injuries to children in their care. The provider must comply with one of the following options:<sup>7</sup>

1. Carry liability insurance covering bodily injury to children and guests caused by negligence of the provider or an assistant (\$100,000 per occurrence, \$300,000 annual total for all occurrences); or
2. Purchase a bond in the amount of \$300,000 to cover liability for child injuries; or
3. Require a signed affidavit from parents of enrolled children stating that they are aware that the provider carries no liability insurance or bond, and, if the provider is not the owner of the family child care home, containing a statement saying that the property owner is not liable. The form for these affidavits can be obtained from your local licensing agency.

Despite the second and third options, the purchase of liability insurance is the safest option for child care providers, and it will occupy most of the discussion that follows.

## TYPES OF LIABILITY INSURANCE

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Liability insurance can provide **general** liability coverage, **specific** coverage, or a combination of the two that is purchased as a package. This section will discuss each of these options.

### GENERAL LIABILITY INSURANCE

1. **What Does It Cover?** General Liability policies usually cover the following kinds of costs when the insured's negligence has caused injury<sup>8</sup>:
  - Bodily or personal injury to others, which includes physical injury, pain and suffering, sickness and death;
  - Damage to other people's property, including both destruction and loss of use;
  - Immediate medical relief at the time of the accident.
  - The legal cost of your defense if you are sued. The insurance company will pay for your defense even if the suit is groundless or the person who is suing you is lying about what happened.<sup>9</sup>
2. **Doesn't My Homeowner's Policy Provide Liability Coverage for Family Child Care?** A homeowner's insurance policy is indeed a type of general liability coverage that you might already have on your home. However, under California law, it is 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 child care home.<sup>10</sup> Therefore, you

will need to obtain a separate “endorsement”<sup>11</sup> to your homeowner's policy or another insurance policy to cover the operation of your family child care home. You should not rely on or expect your homeowner's insurance coverage to protect you from liability resulting from providing child care in your home.

On the other hand, insurance companies cannot arbitrarily cancel, or refuse to renew, a homeowner's policy just because the policy holder is a licensed family child care provider. Such an arbitrary cancellation would subject the insurance company to administrative sanctions by the State Department of Insurance.<sup>12</sup> If your homeowner's policy is canceled because you are running a family child care home, you should contact the California Insurance Department to protest.<sup>13</sup> Insurance companies can cancel your homeowner's policy *only* in the following circumstances:

- You made a material misrepresentation of fact,
- There has been a substantial change in risk since the policy was issued,
- You have failed to pay the premium, or
- The insurance company is no longer writing homeowner's policies.<sup>14</sup>

### 3. Will A Basic General Liability Policy Be Sufficient to Protect Me?

If you operate your family child care program *only* in your home, and you never take the children off-site, a Basic General Liability<sup>15</sup> policy will likely be sufficient. Such policies cover each of the four kinds of costs listed above, but only if the injuries occur *at the program site*. If your program includes off-site activities such as field trips at a nearby playground, you should purchase Commercial General Liability insurance.

### 4. What Is Commercial General Liability (CGL) Insurance?

Commercial General Liability (CGL) is the name of a type of insurance that used to be known as “Comprehensive General Liability” insurance.<sup>16</sup> It is the standard policy used to insure businesses in California,<sup>17</sup> and the policies available to you will be based on the types of liability that are common to family child care. For example, you are covered for claims based on the following:

- Bodily injury and property damage that occurs *away from the program site*.
- Personal injury, which includes libel, slander, defamation of character, and invasion of privacy.
- Contractual liability, which covers injuries caused to others by agencies, foundations, or individuals with whom your program might enter into a contract for services or other support to your program. For example, if you are a renter, you probably have a contract -- either a lease or an agreement for month-to-month rental -- with your landlord.
- Fire damage, which covers fire damage caused to the portions of a building not occupied by your program, if the damage is caused by your program. Note, however, that neither CGL nor your renter's insurance will cover fire damage to *your own* residence if your child

care program causes it. You would have to purchase a **specific liability** policy to cover this, as described in the section entitled Specific Liability Coverage, below.

- Actions of your employees, when they are acting within the scope of their duties.
- Products liability, if someone is injured from your "products". For example, this policy would cover you if someone became ill from a cookie eaten at your fundraising bake sale.

### 5. Do CGL Policies Exclude Any Types of Coverage?

The main advantage of a CGL policy is that it will automatically cover all hazards within the scope of the policy *that are not otherwise excluded*.<sup>18</sup> Standard exclusions will be listed in your CGL policy; common examples are *intentional injury; insured contracts; liquor liability; workers compensation and employers liability; pollution; aircraft; automobile; watercraft; mobile equipment; war; care, custody, and control; damage to your work; impaired property; sistership liability; and failure to perform*).<sup>19</sup> If you do not understand the coverage exclusions or limitations of the CGL policy, you should discuss them completely with your broker-agent until you have a good working understanding of them. Once you understand what is excluded from a CGL policy, you may need to purchase specific liability coverage in line with your program's needs, as discussed below.

## SPECIFIC LIABILITY COVERAGE

The following are some of the key types of specific liability coverage that family child care providers should consider purchasing.

### 1. Fire Legal Liability

If a fire starts in your home or apartment because of negligent acts arising out of your child care program, and it extends to other parts of the building, your CGL policy will cover damage to those other areas but *not to your own residential premises*. You can purchase separate coverage for "Legal Liability" or "Fire Legal Liability" to cover your own premises.<sup>20</sup> Although your landlord probably has fire insurance, if *your program* causes a fire on the premises, your landlord's insurance company will pay your landlord's claim and then attempt to collect the costs of repair to the building from you. The amount of a fire legal liability policy should be enough to restore *completely* the portion of the building that you are occupying in the event of a total loss. The premium is generally lower than what the building owner would pay.

### 2. Non-Owned Auto Liability Coverage

This can be important coverage if your program uses a parent's, volunteer's, or assistant's vehicle to transport the children. Even if the owner of the vehicle has insurance on the vehicle, your program may be sued if an accident occurs. The vehicle owner's coverage may not provide coverage for your program, or if it does, the coverage will probably be minimal. A non-owned auto liability policy provides coverage for injuries and property damage for which the program is

held liable, except that it does not protect the driver. If the driver has her or his own automobile insurance, or if a separate "Volunteers' and Employees' Excess Auto Liability Insurance" policy is in place for the program, the driver will also be protected. (*For more detailed information about adequate vehicle coverage, see CCLC's article, Insuring Your Program: Vehicle and Property Insurance, 1999 revised edition*)

### **3. Other Specific Liability Coverages**

It is possible to rely on a Basic General Liability policy, and purchase separately some of the coverages that come automatically with a CGL policy. That is, you can decide which specific coverages you need, and then buy them as special endorsements to suit your needs and your budget. The following are some of the types of coverage automatically included in most Commercial General Liability plans, which can be purchased separately as Special Liability coverage:

- Premises-Operation (off-site occurrences);
- Products Liability;
- Personal Liability;
- Fire Damage Liability;
- Additional Insured-Employees; and
- Contractual Liability.

## **WHO IS COVERED BY A FAMILY CHILD CARE PROVIDER'S LIABILITY POLICY?**

This really involves two questions: (1) will the program be covered if it is sued for the negligent acts of your assistant; and (2) will the assistant be covered if s/he is sued individually for his or her negligent acts? It is important that the program prepare for either possibility when purchasing liability coverage.

### **1. Employees**

Your general liability insurance should cover the program if it is sued because of the negligent acts of its employees *when they were acting within the scope of their duties*.<sup>21</sup> Your liability insurance will *not* cover damage caused by an employee's willful or criminal acts, because the California Insurance Code explicitly states that insurers are not liable for such damage.<sup>22</sup> If a lawsuit names both you and your employee as defendants, the policy usually will not pay for your employee's legal defense or for any judgment against him or her unless your employee is an "additional insured" on the general liability policy. Most CGL policies include some amount of coverage for "additional insureds" but you should explore this carefully when you purchase liability coverage, and make sure that employees can be additional insureds under your policy.

### **2. Volunteers**

Liability insurance policies do not usually cover volunteers, even when they work for non-profit organizations,<sup>23</sup> so if your child care program relies on them, you should obtain an "additional insured" policy specifically for volunteers. Under such a policy, volunteers are protected if they injure

someone or damage property while acting within the scope of their volunteer duties. You will not have to name individual volunteers, but you should be sure that volunteers as a category can be covered.

### 3. Landlords

California law permits landlords to request that they be named on the provider's insurance policy as "additional insureds."<sup>24</sup> If the landlord requests in writing that she or he be named on the liability policy, the provider must comply, unless naming the landlord in the policy would result in the cancellation of the policy. The landlord must pay any increase in premiums resulting from naming the landlord on the liability policy.<sup>25</sup> Landlords may be named as co-defendants in lawsuits against tenant-family child care providers. If the landlord is named on the liability policy covering the child care program, the insurance would cover the cost of both the landlord's and tenant's defense, and any part of the settlement or judgment against either party, up to the policy limits.

## WHAT IS NOT COVERED BY LIABILITY INSURANCE?

- 1. Accidents in which no one is at fault.** Liability insurance is meant to protect against the insured's potential *tort liability* to other people – that is damage to another's person or property that is determined to be the fault of the insured.<sup>26</sup> If a child is injured while in your care, but it turns out that the injury was not your program's fault, your liability insurance policy will defend you in a lawsuit, but will not cover the damages.<sup>27</sup> For this reason, and because many injuries to children are not anyone's fault, an additional policy covering accidental injuries is worth considering. Many of the group insurance policies available to child care programs include both types of insurance.
- 2. Transporting children.** General liability policies do not cover an injury, which occurs while a child is riding in an automobile. Auto liability insurance is always written as a separate policy. If you transport children in your vehicle, or one owned by an employee or by one of the parents, make sure there is adequate auto insurance. (*For more detailed information about adequate vehicle coverage, see CCLC's article, Insuring Your Program: Vehicle and Property Insurance, 1999 revised edition*)
- 3. Damage to your own property.** As mentioned above in connection with fire legal liability coverage, general liability insurance does not cover damage to *your own* property, whether it is owned, rented, or leased. Property insurance is always written as a separate policy, and you should purchase it in addition to liability insurance.
- 4. Child Abuse.** Liability insurance only covers civil liability for unintentional (negligent) acts that result in harm -- *not* willful conduct or criminal misconduct.<sup>28</sup> All acts of child abuse in California are deemed to be criminal acts,<sup>29</sup> not to mention intentional torts, so that such acts cannot be covered by liability insurance. *J. C. Penney Casualty Insurance Company v. M. K.*, 52 Cal.3d 1009, 804 P.2d 689, 278 Cal.Rptr. 64 (Cal. S. Ct. 1991). The *J.C. Penney* case

explicitly involved one particular form of child abuse – sexual abuse – but the principle governs all types of child abuse, and it means that if a family child care provider is sued – in a criminal case or for civil damages – the provider would have to pay for his or her own legal defense and penalties. No liability insurance can be purchased to protect against the willful or criminal acts of program staff, and most policies explicitly exclude sexual abuse and molestation from coverage.

Whether the program itself could be civilly liable for child abuse by an employee or volunteer is an unsettled area of the law in California. The appellate courts have been reluctant to make school districts liable for sexual assaults by teachers on students, but have suggested that those districts might be liable to the victims based on negligent hiring or supervision of the perpetrator.<sup>30</sup> Although the state Supreme Court has not ruled on this issue, the same logic could be applied to family child care programs who are sued for negligent hiring or supervision of the allegedly abusive assistant, volunteer or family member. Thus, you should clarify whether the particular terms of your liability insurance policy might cover a claim for negligent hiring, even if it were not available for the act of sexual abuse itself.

## HOW DO I BUY AND USE LIABILITY INSURANCE?

**1. Finding an Insurance Carrier.** Not all insurance companies offer liability coverage for child care facilities. The ones that do offer it may have restrictions on the type of child care programs they cover, the states in which they are allowed to provide coverage, their exclusions and policy limits, and other variables. Each provider must find a policy that can be tailored as closely as possible to the individual needs of her or his program. Because prices and types of coverage can vary significantly from one company to another, it is up to each provider to exercise her or his consumer rights and shop around.

Liability policies can be purchased directly from an agency or broker, or sometimes through a child care association. If you are experiencing difficulty in locating insurance, contact your family child care association or child care resource and referral agency for information about group policies or companies that are insuring child care programs in your area. Other information may be obtained from:

- The National Child Care Information Center, 243 Church St. NW, 2<sup>nd</sup> Floor, Vienna, VA 22180, Tel: 800-616-2242; Fax: 800-716-2242; TTY: 800-516-2242. Website: <http://www.nccic.org/abtnccic.html>
- The California Department of Insurance, Consumer Communications Bureau, 300 South Spring St., Los Angeles, CA 90013, Tel: 800-927-HELP (4357); TDD: 800) 482-4833; Website: <http://www.insurance.ca.gov/docs/FS-Contacts.htm>
- The Redleaf Institute, Redleaf National Institute, 450 North Syndicate, Suite 5, St. Paul, MN 55104; Tel: 651-641-6675; Fax 800-641-0115),

Website: [rni@redleafinstitute.org](mailto:rni@redleafinstitute.org)

**2. How Much Coverage Is Enough?** Family child care insurance is offered in fairly standard amounts. In California, family child care homes must carry a minimum of \$100,000 per occurrence and \$300,000 annual total coverage if they choose to have liability insurance.<sup>31</sup>

**3. How Do Policy Limits Operate?** Liability insurance is written on either a "split limit" basis or a "combined single limit" basis. A split limit policy states a separate limit for different types of claims growing out of a single event or combination of events. Coverage can be split (limited) per person, per occurrence, between bodily and property damage, or in other ways.<sup>32</sup> A combined single limit policy identifies a single sum of coverage for any combination of claims,<sup>33</sup> and is often recommended because of its flexibility. For example, if the program was sued for negligence and found liable for \$75,000 bodily injury and \$25,000 property damage, a \$100,000 single limit policy would provide complete coverage. Conversely, with the same suit, a split limit policy of \$50,000 personal injury and \$50,000 damage would leave the program having to pay \$25,000 out of its own funds to cover the bodily injury award.

**4. Can I Buy Additional Coverage Beyond the Limits of the Policy?** Yes, but you will have to pay an extra premium. If it is available, excess liability coverage can provide extra amounts of coverage above the limits of the basic general liability insurance policy. For example, if you purchase a \$100,000 comprehensive general liability policy from Company A, you could buy an excess liability policy from Company B that would provide another \$400,000 of coverage. The combined total coverage would be \$500,000. The second policy would provide extra liability coverage only after the basic policy paid on the claim to its limits.

**5. What Is The Difference Between a "Claims Made" and an "Occurrence" Policy?**

General liability policies can be written as either "claims made" or "occurrence" policies.<sup>34</sup> With a "claims made" policy you will be covered if the insured injury happens while the policy is in effect, but *only* if the policy is still in effect when the lawsuit is filed. With an "occurrence policy," you will be covered for any insured injury that happens while the policy is in effect, even if you are sued after the policy has been cancelled. Since the long-term effects of an injury aren't always immediately known, it is preferable to obtain an occurrence policy, although it may cost substantially more than a "claims made" policy. It may also be possible to pay an additional premium for a "claims made" policy that covers prior-occurring incidents that you did not know about.

## **ALTERNATIVES TO LIABILITY INSURANCE**

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While there are alternatives to insurance coverage, you will note from the discussion that follows that none is as effective as purchasing liability coverage.

## BONDS

California law gives family child care providers the option of purchasing a bond in the amount of \$300,000 to provide liability coverage for child injuries.<sup>35</sup> Bonds are insurance-like instruments that obligate someone called a “surety” to pay a certain sum upon the occurrence of some specific event.<sup>36</sup> In reality, a bond that covers bodily injury would be difficult for family child care providers to obtain, and would furnish less protection than liability insurance. Such bonds cover damages if a business owner loses a lawsuit and cannot afford to pay the *judgment*, but they do *not* pay for the legal expenses of defending the lawsuit. Those expenses are often large, and they *would be* covered by a general liability insurance policy. A bodily injury bond is more suitable for business entities like janitorial services, building contractors, or landscapers that work on someone else’s property and want to assure their clients that they are “bonded” for any injuries they cause or suffer there. In any case, a family child care provider wishing to purchase a bond would probably have to use the services of an insurance agent, who can explain its pros and cons and draw comparisons with liability insurance.<sup>37</sup>

## PARENT AFFIDAVITS SHOWING KNOWLEDGE OF NO PROVIDER INSURANCE

California law also gives family child care providers the option of requiring parents to sign an affidavit showing that they *know* the provider is uninsured.<sup>38</sup> An affidavit is simply a written document that is signed under penalty of perjury. However, even if a parent signs such an affidavit, it does not release a family child care provider from legal responsibility for negligent injury to a child in his or her care. All it really does is clarify that the parents know the provider has no insurance.

## PARENT WAIVERS/RELEASES FROM LIABILITY

Family Child Care providers have tried to include waivers, releases, or other “exculpatory clauses” in their contracts to protect themselves against liability for any harm suffered by the children in their care. But the courts in California and other states have found such contract provisions to be invalid because they violate public policy.<sup>39</sup> Although this issue is still being litigated, there is a strong possibility that this kind of clause in a contract would not protect you in court. A recent California case, *Gavin W. v YMCA of Metropolitan Los Angeles*, 106 Cal.App.4th 662, 131 Cal.Rptr.2d 168 (2d Dist. 2003), is a good example of pending litigation. In *Gavin*, a state court of appeals ruled that contracts for child care services are “affected with a public interest” because child care is indispensable and because demand greatly exceeds supply in California. The court then held that contract provisions exculpating a child care provider from its own negligence are void as against public policy. The case is likely to be appealed to the state Supreme Court, which will render the final word on California law.

## HOMESTEADING YOUR HOME IF YOU OWN IT

In California, if you own your home, you can protect a portion of its value in the event of a judgment against you for negligence, by "homesteading" it.<sup>40</sup>

**1. What Is Homesteading?** Homesteading is the filing of a form with your County Recorder's Office, to protect the equity that you have accumulated in your house.<sup>41</sup> This means that if someone successfully sues you, and you have to sell your home in order to pay the judgment against you, the amount of your equity up to the homestead limit would be paid back to you after the sale. You are only allowed to declare one residence as your homestead, but once you have done so, your protection will continue even if you move away and rent the property to someone else.<sup>42</sup>

### 2. How Can I Homestead my Home?

- You should call or visit your County Recorder's Office to ask for instructions and forms. If you cannot get a homestead form from your County Recorder's office, you can buy one from your local stationery store, and be sure to use the appropriate one depending on your personal situation: "Husband and Wife," "Unmarried Head of Household," "Unmarried, Not Head of Household," "Husband," or "Wife." You must include (1) the name of the declared homestead owner (this may be both husband and wife if each has an interest in the property); (2) a legal description of the property, which you can copy from your deed; (3) a statement that the homestead is your principal dwelling and that you or your spouse reside in the home; and (4) a statement that the facts stated in the Homestead Declaration are known by you to be true. The form should be signed before a notary and filed at your County Recorder's Office, with a copy that you can keep for your own files.<sup>43</sup>
- You can use a Homestead Filing Service in your county. These may be found in the yellow pages, and they must operate according to standards set by the California Department Of Consumer Affairs.<sup>44</sup>

**3. What Is the Homestead Limit?** California law determines the amount of protection based on your family makeup, your age, or your ability to work at the time the successful plaintiff seeks to enforce a money judgment against you. As of January 1, 2004, the statutory homestead protections<sup>45</sup> were:

- \$125,000 if you or your spouse is 65 years or older, disabled, or can't work, or if you or your spouse is 55 years or older and earns less than \$20,000 per year, or if you are unmarried, are 55 years or older and earn less than \$15,000 per year.
- \$75,000 if you or your spouse is a member of a family unit that has at least one family member who has no interest in the homestead (a child, for example), or who has a community property interest with the debtor, or
- \$50,000 if none of the above applies.

- Note that if you have filed as a husband and wife and later divorce or separate, you should re-file as an individual homeowner. Also, if you later wish to cancel the Declaration of Homestead on your home (so as to sell it or use it to secure a loan), you must file a "Declaration of Abandonment" form with the County Recorder's Office.<sup>46</sup>

**4. When Should I Homestead My House?** If you are sued, you should file the appropriate form with the County Recording office immediately, before a judgment is entered against you.<sup>47</sup> If you fail to declare homestead on your home before a judgment is entered against you, you will have very few protections for the equity in your property if you are unable to pay the judgment up-front. If you have previously homesteaded your home and wish to cancel it at a later date, you may do so by either filing a Declaration of Homestead for a different property, or by filing a Declaration of Abandonment on the property originally homesteaded.<sup>48</sup>

## CONCLUSION

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As a family child care provider, you play an enormously important role in caring for California's children. While you cannot prevent all problems from occurring, you can protect your business from claims of negligence by making sure that you have adequate liability insurance coverage. If that coverage is in place, you can focus your attention on the real purpose of your program, which is to provide the "good quality child day care services [that] are essential for working parents" and "critical to the well-being of parents and children" in California.<sup>49</sup>

## ENDNOTES

- <sup>1</sup> CA HEALTH AND SAFETY CODE ANN. §§1597.44 and 1597.465 (West 2004).
- <sup>2</sup> 6 Witkin, Summary 9th (1990) Torts, § 732, p. 60.
- <sup>3</sup> 6 Witkin, Summary 9th (1990) Torts, § 858, p. 220.
- <sup>4</sup> California law makes someone liable for negligence if there is (a) a legal duty to use due care; (b) a breach of such legal duty; (c) the breach as the proximate or legal cause of the resulting injury. 6 Witkin, Summary 9th (1990) Torts, §732, p. 60.
- <sup>5</sup> A liability insurer owes a broad duty to defend its insured in any lawsuit that may seek damages within the coverage of the policy. *Horace Mann Insurance Company v. Barbara B.*, 4 Cal. 4th 1076, 1081, 846 P.2d 792, 795, 17 Cal. Rptr.2d 210, 213 (Cal. S. Ct. 1993).
- <sup>6</sup> See pamphlet published by the California Department of Insurance, Small Business Guide to Commercial Insurance (revised March 2004) (hereafter “Insurance Department Pamphlet”). This brochure is available by calling 800-927-4357; or by writing to CDI, Consumer Communications Bureau, 300 South Spring St., Los Angeles, CA 90013; or by downloading it from <http://www.insurance.ca.gov/docs/FS-Consumer.htm>
- <sup>7</sup> CA HEALTH AND SAFETY CODE ANN. §1597.531 (West 2004).
- <sup>8</sup> CA INSURANCE CODE ANN. §108 (West 2004).
- <sup>9</sup> In California, the broad “duty to defend” means that insurance companies must often defend their insureds in lawsuits where no damages ultimately are awarded. *Gray v. Zurich Insurance Company*, 65 Cal.2d 263, 419 P.2d 168, 54 Cal.Rptr. 104 (Cal. S. Ct. 1966).
- <sup>10</sup> CA INSURANCE CODE ANN. § 676.1(c) (West 2004).
- <sup>11</sup> An “endorsement” is an amendment or addition to a policy, which may also be known as a “rider.” See *Insurance Department Pamphlet* cited in footnote 6 above. See also Brenda Cude & Carol Volker, Liability insurance and the Family Child Care Provider, North Central Regional Publications NCR395 (1993). Although this pamphlet is ten years old, its basic information and glossary are accurate and helpful. Copies may be obtained from University of Missouri-Columbia Extension Publications, 2800 Maguire Blvd, Columbia MO 65211 (tel: 800-292-0969).
- <sup>12</sup> CA INSURANCE CODE ANN. §676.1(a) (West 2004).
- <sup>13</sup> Call 800-927-HELP (4357) or visit <http://www.insurance.ca.gov/docs/FS-Consumer.htm>.
- <sup>14</sup> CA INSURANCE CODE ANN. §676.1(a) (West 2004).
- <sup>15</sup> John F. Dobbyn, *Insurance Law In A Nutshell* (West Group, St. Paul MN 2003) p. 43 (hereafter “*Insurance Law In A Nutshell*”).
- <sup>16</sup> *Id.*
- <sup>17</sup> See *Insurance Department Pamphlet* cited in footnote 6, above.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> *State Farm Fire & Casualty Company v. Century Indemnity Company*, 59 Cal.App.4th 648, 69 Cal.Rptr.2d 403 (Cal.App. 6th Dist. 1997).
- <sup>22</sup> CA INSURANCE CODE ANN. §533 (West 2004). See also *J. C. Penney Casualty Insurance Company v. M. K.*, 52 Cal.3d 1009, 804 P.2d 689, 278 Cal.Rptr. 64 (Cal. S. Ct. 1991).
- <sup>23</sup> Jerrold Oshinsky and Gheiza M. Dias, “Liability of Not-for-profit Organizations and Insurance Coverage for Related Liability,” 4 *Journal of Not-for-Profit Law* (Issue 2/3 May 2002).
- <sup>24</sup> CA HEALTH AND SAFETY CODE ANN. §1597.531(b) (West 2004).
- <sup>25</sup> *Id.*
- <sup>26</sup> *Insurance Law In A Nutshell*, footnote 15, above, p. 43.
- <sup>27</sup> See footnote 7, above.
- <sup>28</sup> CA INSURANCE CODE ANN. §533 (West 2004). See 1 Witkin, Summary 9th (1990) Contracts §632, p.569.
- <sup>29</sup> CA PENAL CODE ANN. §273a (West 2004). See 1 Witkin, Cal. Crim. Law 3d (2000) §§162 and 188.
- <sup>30</sup> *State Farm Fire & Casualty Co. v. Century Indemnity Co.* (Cal. App. 6th Dist. 1997) 59 Cal.App.4th 648, 69 Cal.Rptr.2d 403; *John R. v. Oakland Unified School Dist.* (Cal. App. 1st Dist. 1989) 48 Cal. 3d 438, 256 Cal. Rptr. 766.
- <sup>31</sup> CA HEALTH AND SAFETY CODE ANN. §1597.531(a) (West 2004).
- <sup>32</sup> See Glossary, *Insurance Department Pamphlet* cited in footnote 6, above.
- <sup>33</sup> *Id.*

34 *Id.*

35 CA HEALTH AND SAFETY CODE ANN. §1597.531(a) (West 2004)

36 *Insurance Law in a Nutshell*, p. 345.

37 Family child care providers who decide to use this alternative should be aware that a “fidelity bond” will not satisfy California’s Health & Safety Code requirement. *Insurance Law in a Nutshell*, p. 359. Fidelity bonds allow for the recovery of money embezzled by employees rather than judgments for bodily injury.

38 CA HEALTH AND SAFETY CODE ANN. §1597.531(a) (West 2004).

39 Rohwer, Claude D. and Skrocki, Anthony M., *Contracts in a Nutshell, 5<sup>th</sup> Edition* (West Publishing Co., St. Paul MN 2000), §5.11.2.

40 CA. CIVIL PROCEDURE CODE ANN. §704.910 (West 2004).

41 CA. CIVIL PROCEDURE CODE ANN. §704.950 (West 2004).

42 *In re Amiri*, 184 B.R. 60 (9th Cir. BAP 1995); *In Re Kelley*, 285 B.R. 1, 2 (Bankr. N.D. Cal. 2002)

43 CA. CIVIL PROCEDURE CODE ANN. §§704.920 and 704.930 (West 2004).

44 See pamphlet produced by the legal department of California’s Department of Consumer Affairs, *Regulation of Homestead Filing Services* (Sept. 1996). To obtain a copy of this pamphlet, call the DCA Publications Department, 800-952-5210; or write to 401 S Street, Suite 100, Sacramento CA 95814; or download it from the DCA website: <http://www.dca.ca.gov/legal/h-1.htm>

45 CA. CIVIL PROCEDURE CODE ANN. §704.730 (West 2004).

46 CA. CIVIL PROCEDURE CODE ANN. §§704.980 - 704.990 (West 2004).

47 CA. CIVIL PROCEDURE CODE ANN. §704.930 (West 2004); *In re Knudsen*, 80 B.R. 193 (Bankn. C.D. Cal. 1987).

48 CA. CIVIL PROCEDURE CODE ANN. §§ 704.960 – 704.980 (West 2004).

49 CA HEALTH AND SAFETY CODE ANN. §§1596.72(e) and 1596.73(e) (West 2004).