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**LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS:  
CONTRACTS**

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

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# LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS: CONTRACTS

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## CHILD CARE CONTRACTS: INFORMATION FOR FAMILY CHILD CARE PROVIDERS

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*While looking over the tuition checks from Thanksgiving week, you notice that the two new families didn't include payment for the holiday when the child care home was closed. Since these two families started in September, it's hard to remember whether they were told that payment is still expected on national holidays, even when the home is closed. You now wonder whether it's worth the \$50 and possible dispute to ask them to pay the additional money.*

\* \* \* \* \*

As a licensed family child care provider, you may care for up to eight or fourteen children in your home. Unexpected disputes like this will happen less often and cause fewer problems if you and the parents know what to expect from each other right from the start. Certainly, you can never completely avoid future misunderstandings, but you can eliminate many problems by talking frankly with the parent before the child is enrolled and by putting your program's important considerations and rules in writing.

This publication provides information about why it is usually a good idea to use a contract, and discusses legal issues involved when child care providers use contracts. Included is information about the legal effect of a signed contract, as well as a list of suggested rules that providers have used successfully with parents.

- ✓ *The legal principles apply generally to all states. When appropriate, this article highlights California-specific law with a check mark and italics, as exemplified by this insert. Where possible, the endnotes include both a general legal citation and a California-specific citation.*

Please note that special rules apply to families receiving subsidies, and to child care providers who are paid with subsidies. This article is not designed for use when child care subsidies are involved, and some of the information in this document does not apply to this situation. Please read the Child Care Law Center's article on child care subsidies for more information.

### WHY USE A CONTRACT?

Having parents sign a contract and observe rules developed for your program can help in a number of situations:

- BEFORE ENROLLMENT: Contracts and rules help ensure that you are as thorough as possible with parents when talking with them before they enroll their

children. When you are clear with parents about your expectations and requirements before they enroll their children, parents can make better choices about whether or not your child care can meet their needs.

- DURING ENROLLMENT: If you have a written contract with written policies, you can make sure that you and the parent both have a good understanding about the terms of your relationship, and about applicable policies and procedures.
- DURING THE CHILD CARE RELATIONSHIP: Contracts and rules prevent misunderstandings or arbitrary treatment of parents. Written rules cut down on the number of "business" discussions you need to have with each parent, allowing more time for talking about the child's needs and development at the program.
- IN GENERAL: Contracts can bring more respect for your work, and protect both parties in the case of a dispute about services or payment. A contract can communicate to a parent that you take your work seriously and that you are offering an important service for which you expect compensation.<sup>1</sup>

As stated above, the provider is not the only one who benefits from a contract. A parent receives the same benefits from seeing expectations in writing; the parent also enjoys some protection in case a provider doesn't meet his/her obligations. For example, if you as the provider ask a family to leave immediately, without the amount of notice required by your contract, then the parent probably is entitled to demand a refund of what has already been paid to cover that period.

If a parent does not pay you or either party (i.e., you or the parent) breaks an important rule of the program, the contract may give the damaged party the basis for suing or threatening to sue. In other words, the contract could be the basis for a lawsuit in Small Claims Court. Small Claims Courts are local courts where anyone can sue another person for limited amounts of money. In some parts of the country, these courts may be known as "justice" or "pro se" courts, and you do not need a lawyer to represent you. In some states, you cannot have a lawyer represent you. The hearing is before a judge or commissioner, who is sometimes a volunteer lawyer. It is a quick process and the decision can be made at the end of the hearing or within a few days. The maximum amount you can sue for is limited to between \$2,000 and \$5,000.<sup>2</sup>

- ✓ *In California, you can use the small claims court if you have a dispute with a person, company or government agency involving a maximum of \$5,000 or less.<sup>3</sup>*
- ✓ *The remedy in such a lawsuit, in California and elsewhere, is money. The amount should compensate for the damage actually caused by the*

*breach of contract or whatever damage is likely to result in the normal course of events.*<sup>4</sup>

- ✓ *If you sue in California's small claims court, you will see that it is quite informal. No one can make the kind of "objections" that lawyers make on television shows, and there are no juries. Cases move quickly, with a hearing often scheduled in a matter of weeks. Anyone (U.S. Citizens and immigrants) who is at least 18 years old and mentally competent may file a claim in small claims court. When you file your claim, the court clerk generally will set the hearing date. In larger communities, small claims court is held some evenings or on a Saturday once a month. Many counties have a small claims advisor who can answer your questions and explain the process. An advisor also may be able to help you find a mediation service.<sup>5</sup> (State Bar of California 1999), available from the State Bar by calling 415-538-2280, or by downloading the online publication at <http://www.calbar.ca.gov/> - click on "Public Services" on the left hand column then "Consumer Information" and follow the link to "Pamphlets")*

## WHAT MAKES A CONTRACT LEGALLY BINDING?

A contract doesn't have to be long, or written in legal language with small print, to be legally binding. A contract doesn't even need to be in writing to be legally binding, although for the greatest amount of protection the terms should be written down and signed by the parties. All the law requires is (1) a mutual agreement and (2) an exchange between you and the parent.<sup>6</sup>

- ✓ *California law defines a contract simply as "an agreement to do or not to do a certain thing,<sup>7</sup> which, depending on the subject matter, may be oral, written, or partly oral and partly written."<sup>8</sup> California law does not require that a child care contract be written.*

The mutual agreement means that you have had a "meeting of the minds": that both you and the parent understand the rules to which you are agreeing. If the parent reads and understands the rules in your contract, and then you both sign it, the law treats this as a mutual agreement that those rules will govern your relationship as long as the child is in your program.<sup>9</sup> However, the provider and parent can change the contract in two ways: first, by writing a new or amended contract, and second, by engaging in conduct that suggests the existence of an implied contract. For example, a parent and a child care provider sign a contract that says that payment is due each week on Monday before care is provided. However, a parent always pays 2 weeks late on Fridays, and the provider never complains. Even though the written contract says that payment is due in advance, a court might

decide that an implied contract allows the parent to make payments 2 weeks late on Fridays.<sup>10</sup> See “Can I Change the Contract or Rules After Parents Have Signed them?” below.

The exchange means that you both give up something and receive something under the contract. Any time you agree to take care of a child for pay there has been an exchange between you and the parent. The parent agrees to abide by your rules and pay for the child care, and in return, receives care for his/her child. And of course what you are agreeing to do is care for the children in exchange for receiving payment.

The exchange gets tricky when one of you agrees to do something as a favor or gift. For example, if one day at pick-up time a parent spontaneously offers to repair the climbing structure, then backs out later, s/he has not broken any contract. The reason is that his/her promise to do the repairs was merely a gift to you; s/he was not promising to do it for compensation, so there was no exchange, and there is therefore no enforceable contract.<sup>11</sup>

## WHY SHOULD THE CONTRACT BE IN WRITING?

Committing an agreement to writing serves to inform and caution people who might agree to it, and also shows what the original agreement between the parties actually was. Once the contract is signed, the provider and the parent should each keep a copy for his/her records.<sup>12</sup>

A written contract further ensures that there was a "meeting of the minds:" that both parties are aware that a formal agreement is being made, and that they should take appropriate precautions before doing so (e.g., reading the contract terms).<sup>13</sup> More importantly, the writing preserves what human minds often forget, that is, what the original terms of the agreement were. When things are going well, a parent or provider can just refer to it if s/he has a question about the rules. When things are going badly, having the agreement in writing will help to show the parent what the agreement actually was, and it can also make the difference between whether or not a party can convince a court that the other party has broken his/her agreement.<sup>14</sup> If you have agreed to special terms or additional accommodations to suit a particular family's needs, it is especially important to put the agreed-upon terms in writing as it will serve as a way to remember exactly what those special terms were.

- ✓ *In California, if you sign a written document that seems to be a contract, the law deems that you have agreed to all its terms, and you cannot escape liability by claiming you have not read it. People who cannot read well should have contracts read to or explained to them, and people who do not speak English fluently should ask that contracts be translated into their native language.<sup>15</sup> In fact, if the native language of the families you serve is Spanish, Cantonese, or another*

*language other than English, and you handle your family child care business primarily in that language, the law explicitly requires that your contracts be translated into that language.<sup>16</sup>*

- ✓ *Also in California, if you write a contract that has ambiguous or uncertain provisions, you will probably not be able to enforce it against the other party. In such cases, contracts are interpreted “against” the party who caused the uncertainty to exist.<sup>17</sup>*

## HOW DO I MAKE A CONTRACT?

A contract can be drawn up on an individual basis with each parent at enrollment time, or you can develop a standard "Child Care Contract" to use with every parent. Usually, it's best to have a standard contract with some blank spaces for writing in any additional agreements reached with the family based on its particular needs.

When you draw up your own standard contract, it's helpful to look at contracts used by other providers in your community. Included later in this article are some sample contract terms that have been used successfully by providers in other parts of the country. Your contract should address your needs and concerns as a child care provider. Usually, providers cover the following subject areas in their contracts with parents:<sup>18</sup>

- Enrollment and Withdrawal from the Program: Forms that must be kept on file, notice requirements for withdrawal;
- Hours and Fees: When payment is due and in what form, hours of operation, penalties for late pick-ups;
- Vacation and Days Off: Days the program is closed, which holidays are paid holidays, notice requirements for parent vacations;
- Food: Whether meals are provided, requirements for special diets;
- Clothing and Supplies: Whether diapers are provided, requirement to leave an extra change of clothing with the child;
- Illness and Medication: Notification of parent if child is ill, requirement to have parent authorize all medication given to the child, policy not to care for ill children or rules for exclusion of ill children;
- Miscellaneous: Discipline policy, nap policy, toilet training policy.

To "fine tune" the standard contract it may be necessary to include additional agreements reached with a particular family to accommodate its specific needs. For example, a child's diet may be restricted or specialized for religious reasons. If you agree to accommodate those needs,<sup>19</sup> you and the child's parents can fine tune that agreement by describing what the appropriate food is, when it is necessary for the child to partake of the specialized diet, and which of you will provide the described food. If you want these provisions to be enforceable under the contract then the details of this agreement should be spelled out in the contract, in the extra space provided. These extra agreements should be negotiated with the parent before the child is enrolled; of course, you are free to decide whether you want to make any additional agreements with the parents.

California's licensing laws require certain conduct by child care providers. For example, you may not use physical punishment, like spanking, and you have to follow certain protocols if you administer medications. Licensing laws require you follow these requirements *even if* a parent asks you to do otherwise, and *even if* you say something different in your contract. See the Child Care Law Center's publication on licensing for more information.

## **IF THE CONTRACT HAS A SET OF RULES ATTACHED, ARE PARENTS ALSO OBLIGATED TO FOLLOW THOSE RULES?**

Yes. Rules which are attached and referred to in the contract are legally as binding as the contract itself.<sup>20</sup>

- ✓ *In California, even documents that are not attached are deemed to be part of the contract if the parties intended them to be part of the agreement.*<sup>21</sup>

## **DO I TAKE ON ANY NEW RESPONSIBILITIES WHEN I USE A CONTRACT?**

Yes. A written contract sets forth responsibilities for you and the parents while the child is in your program. Of course, even without the contract, parents and providers have certain implied responsibilities (e.g., to pay for the child care, to provide child care). The contract makes these responsibilities very specific.

For example, in one contract (*see sample rules*) a provider may agree that his/her home will be open during specific hours, that s/he will provide certain snacks and meals, and that s/he will accept a certain fee on specific terms. If you require families to give you a certain amount of notice before withdrawing from the program, the law implies that you must give families the same amount of notice before you require them to leave.<sup>22</sup>

- ✓ *California law looks at the parties' conduct to determine if there is an implied contract, and if so, what it entails.*<sup>23</sup>

## CAN I CHANGE THE CONTRACT OR RULES AFTER PARENTS HAVE SIGNED THEM?

Yes. Many states require that, if your contract and/or rules are in writing, any changes also need to be in writing. While verbal changes *might* be binding in your state, the best practice is to make sure that any changes to your contract be in writing, too.<sup>24</sup> Also, good faith requires that you give parents some amount of notice before you change the contract. It is probably wise to include in the contract something about how the terms may be changed in the future (e.g., "Tuition is subject to change with two weeks notice given to parents").

- ✓ *California law allows verbal modification of written contract provisions as long as there is new "consideration" for it – that is, as long as the parties have a new bargained-for exchange.<sup>25</sup> However, writing down any changes insures greater clarity and protection for both sides to a contract.*

It is a good idea to sit down and read your contract and rules at least once a year to make sure that they satisfy your program's needs. If you see that things have changed, rewrite the contract and rules to better fit your present situation. Sometimes parents will suggest changes they would like to see in the contract. When you decide to make changes, write them down, date them, and give copies to all the parents for their signatures. Once the signed contracts are returned, send the parents a copy and keep each original signed copy with your other important records. In general, it is good business practice not to make any changes to a contract that are negotiated and signed with a parent, for about one year.<sup>26</sup>

You should be aware that your conduct over a period of time may also indicate that you and the parent have mutually agreed to change the contract. In other words, by your actions, you may appear to change what is written in the contract, and therefore the written terms may not be enforced by the court. For example, a contract may provide for a monetary penalty for late pick ups; however, if you never enforce that provision (e.g., there are multiple instances when a parent was late for pick up but the provider never charged the parent a late fee) then the court might determine that contract provision to be unenforceable.<sup>27</sup> Therefore, a child care provider using a written contract should be sure that the contract reflects the actual practices of the provider. See also the example about late fees in the section on p. 6 titled "What Makes a Contract Legally Binding?"

## IF I'M NOW OPERATING A PROGRAM WITHOUT CONTRACTS, CAN I

## BEGIN USING THEM?

Yes. If you decide to start using contracts, you should ask all parents to sign, including those who have used your program for a long time. Explain to the parents why you have decided to start using a contract, and be sure to give them a chance to talk with you and ask questions. They will probably not mind being asked to sign a contract if it seems an accurate description of their current relationship with you. You may want to ask parents beforehand for any suggestions they have or for any rules they would like included.

## CAN I USE CONTRACTS TO PROTECT MYSELF AGAINST CLAIMS FOR NEGLIGENCE OR OTHER ERRORS?

Probably not. 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. This kind of clause in a contract may not protect you in court.<sup>28</sup>

- ✓ *A recent California case, [Gavin W. v YMCA of Metropolitan Los Angeles](#), 106 Cal.App.4th 662, 131 Cal.Rptr.2d 168, 3 Cal. Daily Op. Serv. 1693, 2003 Daily Journal D.A.R. 2157 (2003), is a good example of ineffective use of waivers. 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.*

## CAN I USE CONTRACTS IF MY CHILD CARE HOME IS "EXEMPT" FROM LICENSING REQUIREMENTS?

Yes. A contract could still be useful in clarifying how you run your program and what you expect of the parents. However, if state law requires your program to be licensed, but it is not licensed (i.e., your program is not "exempt" from licensing, and you are operating illegally in violation of licensing law), there is a strong possibility that the contract would not protect you in court. For example, if a parent refused to pay and you sued the parent in small claims court, the judge may let the parent off because you were operating an unlicensed (illegal) program.

California is one of a number of states that exempt certain family child care homes from licensing. These exempt homes include those caring for the children of only one family in addition to the operator's own children and any

arrangement for the receiving and care of children by a relative.<sup>29</sup> Exempt providers can have contracts and enforce the contracts in court if necessary.

## WHAT HAPPENS IF I NEED TO SUE IN SMALL CLAIMS COURT OR I AM SUED IN SMALL CLAIMS COURT?

Before you sue a parent, you should demand payment of the debt you believe is due. In some states, this demand must be in writing, but often a verbal request for payment is enough. If you send this kind of demand and the parent does not pay whatever fees are owed or otherwise reach an agreement with you, then you may sue the parent in small claims court. The parent or “defendant” in a small claims action has several options.<sup>30</sup>

For example, the parent can:

- ***immediately pay the money demanded directly*** to the provider and obtain an agreement dismissing the suit; or
- ***settle the suit*** if the provider agrees to take partial payment for dismissing the suit; or

*Note: In reference to the above two items, if you reach an agreement and/or the parent pays you, after you have filed papers in Small Claims Court and the papers have been served to the parent from Small Claims Court, make sure that both parties have written record of the agreement and/or payment. You should sign the record then either you or the parent should make three copies: one for yourself, one to send to the court, and one for the parent. Send the court a copy and ask that the suit be dismissed.*

- ***appear and request a payment schedule***, if the parent does not dispute the debt but is unable to pay the money all at once the parent may ask the court to order monthly payments the parent can afford; or
- ***appear and defend the suit*** by telling the judge why s/he believes that s/he does not owe the money and bringing any evidence s/he has to court (for example, canceled checks); or
- ***ignore the suit*** and possibly be required by the court to pay the money demanded ***plus*** any costs you, the provider incurred in suing the parent (a “default” judgment).
  - ✓ *In California, you will have a hearing 30-40 days after filing your claim if you and the parent live in the same county. If you live in different counties, it may take up to 70 days before you have a court date. The clerk will probably mail the decision to you 2-3 weeks after you appear in court. To access forms and obtain more information on filing requirements, clerks’ offices, and small claims advisory services in your county, visit the California Self Help Center for Small Claims at:*

<http://www.courtinfo.ca.gov/selfhelp/smallclaims/scbycounty.htm>

If, on the other hand, you owe the parent money, or the parent believes that you have violated the contract, the parent may also wish to go to Small Claims Court to collect the money.

## **SAMPLE RULES FOR CHILD CARE PROGRAMS**

The following are examples of rules written by providers in their contracts with parents. The rules are arranged by subject. These are only examples; feel free to pick and choose, to write your own, and to make changes as your own situation requires.

### **ENROLLMENT**

"All forms must be completely filled out and returned before a child enters the program. All forms are subject to yearly renewal and must be kept up to date."

"All children enter the program on a two-week trial basis, during which either party may cancel without notice. At the end of this period, the parent(s) and provider will talk about how the child has adjusted to the new setting. Advance payment for the trial period is required for the entire two-week period, but there is no obligation to continue in the program after the two week trial period is up."

\*Note: You can choose to make the payment for the trial period refundable or nonrefundable if enrollment is terminated in less than two weeks.

"If care will begin at a later date, advance payment for the first week of child care will hold a place for the child. This payment will not be refunded if the child does not begin on the date agreed upon."

"I require a two-week deposit to be paid prior to the child's first day which is applied to the last two weeks of care after notice of termination is given."

"A Parent-Provider Contract may be terminated at the parent's or the provider's discretion with two weeks unless both parties agree to a shorter period of time."<sup>31</sup>

### **HOURS AND FEES**

"I provide full-time care Monday through Friday only, and my hours are 7:30am to 6:30pm. All children must arrive no later than 9:00am so that any planned activities won't be disrupted."

"Once a schedule is adopted, the scheduled drop-off time and pick-up time must be observed. I charge \$2.00 extra for every 15 minutes or fraction thereof that a parent is late when picking up his/her child."

"One month's payment for child care must be made in advance, on the first day of each month."

### VACATIONS AND DAYS OFF

"Parents are allowed two weeks of vacation per year for which there is no charge and during which the child's space in the program will be held."

"The program is closed and the provider is paid for all federal holidays, as well as Christmas and New Year's Eve, and the day after Thanksgiving."

"I do not deduct payment for holidays when the program is closed, and I do not substitute days for days missed."

"If I am sick or I decide to take vacation time, I will find a substitute provider who will come to my home and care for the children. I will give parents two days' notice if there is to be a substitute provider, whenever possible."

*\*Note: The law is unclear as to whether a parent is required under a family child care contract to accept the provider's choice for a substitute. Therefore, the parent might not be obligated to pay for care that day if they choose instead to place their child in an alternative care arrangement.*

"If a family needs to be absent from the program, a leave of one month can be paid at half the regular fee to hold the child's space. After one month, the family must pay the full price of regular weekly care for me to reserve the child's space."

### FOOD

"Parents bring the child's lunch and milk. Provider supplies juice and snacks in the morning and afternoon."

"Please do not send gum, candy, money or food other than lunch to child care unless you send enough for everyone."

"I will provide lunch and two nutritious snacks."

"We observe special days (e.g., birthdays) so you may bring cake, cookies, or other treats to help celebrate. Please let me know in advance if you have planned anything."

"Parents must provide and label any special foods they want me to serve to children."

### CLOTHING AND SUPPLIES

"Children's belongings should all be labeled with the child's name. The program is not responsible for lost articles."

"Parents are asked to provide washable nap pad, pillow and blanket for all children taking naps."

"Please don't bring your child's toys or special belongings; they could get lost or broken."

"Please bring disposable diapers for children still wearing them."

"On the first day, the parent needs to bring two complete changes of clothes and one extra pair of shoes for his/her child. These clothes are to be left at the program and they will be washed when they get dirty. I suggest that you not bring something that you may want back every week."

### ILLNESS AND MEDICINE<sup>32</sup>

"Parents should notify the provider if the child has been ill during the evening, morning, or weekend before returning to the program."

"If you are notified by the provider that your child is ill, please pick him/her up as soon as possible."

"Please inform me of any contagious diseases when they occur in your family. If your child becomes ill or is injured at the program and you cannot be reached, the physician on the Medical Treatment Authorization form will be called. I recommend that you also leave a signed authorization form with your physician."

"A signed authorization form is required any time the provider is asked to give medication to a child while in care. Medication will be given only if the medication is in its original container."

"Please keep children home whenever they have a fever or during the first two days of a bad cold or cough. If there are any questions about whether you should bring your child or not, please call me first."

### MISCELLANEOUS

"The parents and the provider will have a meeting every four months to talk about how their children are doing in the program."

"No corporal punishment will be used, even if the parent requests it."

"All children must nap or have a rest time in the early afternoon each day."

"All persons picking up children must be authorized to do so in a written note by the child's parent."<sup>33</sup>

"The child must be brought to the door and the provider must be told that s/he has arrived. S/he must be picked up at the door and the provider told s/he is leaving."

"Please help me maintain good relations with my neighbors. Do not park in the neighbors' driveways or double park and only park in legal spaces."

## ARE THERE ANY ADDITIONAL RESOURCES FOR PROVIDERS?

1) A longstanding basic resource on this topic is: *Family Child Care Contracts & Policies: How to Be Businesslike in a Caring Profession*, by Tom Copeland, J.D., Red Leaf Press, 2<sup>nd</sup> ed., St. Paul, Minnesota, 1997.

2) Nolo Publications, <[www.nolo.com](http://www.nolo.com)> has a good range of publications for small businesses, and can be contacted through its website or (phone) 800-728-3555, (Fax)800-645-0895, 950 Parker Street, Berkeley CA 94710-2524. Nolo also has a useful online resource called *Keeping Your Contract Simple – and Enforceable*, <<http://www.nolo.com/lawcenter/ency/article.cfm/objectID/EEF92280-11CF-4910-8DECF67369130844>>.

3) Several websites that provide and explain basic legal concepts to the public are cited in the endnotes to this chapter. These websites are meant only to provide general information, and should not be treated as a form of legal advice.

4) Particularly useful material on small claims court may be found in the following:

- a. *State Bar pamphlet*, "How Do I Use The Small Claims Court?" available by calling 415-538-2280, or from the State Bar website: <<http://www.calbar.ca.gov>> (Follow the link to "Public Services" and then click on "Using the Small Claims Court")
- b. *Nolo Online Publications*, "Law For All" entry on small claims courts: <<http://www.nolo.com/lawcenter/ency/index.cfm>> (Under the heading "Lawsuits and Mediation," follow the link to "Small Claims Court")
- c. Ralf Rinkle, *Lectric Law Library*, <<http://www.lectlaw.com/def/i086>>.

- 5) Finally, for California-specific contracts law, there are two especially helpful websites:
- a. *Professor Smith's Contracts Tutorial*,  
<<http://www.west.net/~smith/contracts.htm>>
  - b. *California Contract Law*,  
<<http://www.weblocator.com/attorney/ca/law/c06.html#cac060000>>

## ENDNOTES

- <sup>1</sup> Rohwer, Claude D. and Skrocki, Anthony M., *Contracts In a Nutshell, 5<sup>th</sup> Edition* (West Publishing Co., St. Paul MN 2000), §1.1 (hereinafter "*Contracts In a Nutshell*"); see also Saalfeld, Griggs, Alexander & Emerick, P.C., *I Thought We Had A Deal!* <http://www.sglaw.com/Publications.html>
- <sup>2</sup> See Ralf Rinkle, 'Lectric Law Library: Small Claims Court, <http://www.lectlaw.com/files/jud24.htm>
- <sup>3</sup> *California Code of Civil Procedure* §116.220 (West 2003). See also California State Bar, *How Do I Use The Small Claims Court*, available from the State Bar by calling 415-538-2280, or by downloading the online publication at <http://www.calbar.ca.gov/> - click on "Public Services" on the left hand column then "Consumer Information" and follow the link to "Pamphlets"
- <sup>4</sup> *California Civil Code* §3300 (West 2003).
- <sup>5</sup> See "*How Do I Use the Small Claims Court?*".
- <sup>6</sup> *Contracts In a Nutshell*, §1.2; see also "What Is A Contract?" <http://freeadvice.com/law/518us.htm>
- <sup>7</sup> *California Civil Code* §1549-1550 (West 2003).
- <sup>8</sup> *California Civil Code* §1622 (West 2003).
- <sup>9</sup> *Contracts In a Nutshell*, §2.1.2; see also Nolo Online Publications, For California law on mutual assent, see *California Civil Code* §1565, and 1 Witkin, Summary 9<sup>th</sup> (1990), §119 p. 144.
- <sup>10</sup> *California Civil Code* §1621
- <sup>11</sup> *Contracts In a Nutshell*, §2.24; see also D. Reed Freeman, Jr., *Consideration*, (1999) <[http://profs.lp.findlaw.com/contracts/contract\\_5.html](http://profs.lp.findlaw.com/contracts/contract_5.html)>. For California law, see 1 Witkin, Summary 9<sup>th</sup> (1990) *Contracts*, §227 p. 236.
- <sup>12</sup> D. Reed Freeman, Jr., *Written Contracts*, (1999) [http://profs.lp.findlaw.com/contracts/contract\\_2.html](http://profs.lp.findlaw.com/contracts/contract_2.html)
- <sup>13</sup> *Contracts In a Nutshell*, §2.1.2.
- <sup>14</sup> Witkin, Summary 9<sup>th</sup> (1990), §120 p. 145.
- <sup>15</sup> Witkin, Summary 9<sup>th</sup> (1990) *Contracts*, §127 p. 151; see *California Civil Code* §1632 (West 2003).
- <sup>16</sup> Witkin, Summary 9<sup>th</sup> (1990) *Contracts*, §698 p. 631; see *California Civil Code* §1632 (West 2003).
- <sup>17</sup> *Contracts In a Nutshell*, §2.2.; see *California Civil Code* § 1654 (West 2003).
- <sup>18</sup> Sick or injured children, or those with disabilities, may require different policies. See CCLC's articles *Caring for Children with Special Needs*, 2003 Revised Edition, and *Legal Aspects of Caring for Sick and Injured Children*, 2003 Revised Edition, both of which can be found in this Handbook.
- <sup>19</sup> If a restricted diet is due to a child's allergies or other medical reason, you may be required to accommodate the child by providing substitute foods. The Americans with Disabilities Act requires this for children with disabilities when it is reasonable to do so, and the cost cannot be passed along to the parent of the child with the disability. However, if the special diet is due to personal beliefs, a private

child care provider has the option of choosing whether to accommodate the request. For further discussion of this issue, see CCLC's article *Caring for Children with Special Needs*, 2003 Revised Edition of this Handbook.

<sup>20</sup> Ralf Rinkle, 'Lectric Law Library, <<http://www.lectlaw.com/def/i086.htm>>.

<sup>21</sup> Witkin, Summary 9<sup>th</sup> (1990) Contracts, §687 p. 620; see California Civil Code §1642 (West 2003).

<sup>22</sup> *Contracts In a Nutshell*, §4.9.

<sup>23</sup> Witkin, Summary 9<sup>th</sup> (1990) Contracts, §11 p. 46; see California Civil Code §1621 (West 2003).

<sup>24</sup> *Contracts In a Nutshell*, §7.5.

<sup>25</sup> Witkin, Summary 9<sup>th</sup> (1990) Contracts, §910-913 pp. 815-17; see California Civil Code 1698(c) (West 2003).

<sup>26</sup> TOM COPELAND, J.D., *Family Child Care Contracts & Policies* 45 (1991).

<sup>27</sup> 1 Witkin Summary 9<sup>th</sup> Ed. (1990), Contracts §914, p. 818.

<sup>28</sup> See generally *Contracts In a Nutshell*, §5.11.2.

<sup>29</sup> California Health & Safety Code §1596.792(d) and (f) (West 2003).

<sup>30</sup> See Nolo Publications, The Defendant's Small Claims Options, <<http://www.nolo.com/lawcenter/ency/>> (under the heading "Lawsuits and Mediation" follow the link to "Small Claims Court," and then click on "Defendant's Small Claims Options").

<sup>31</sup> The passage of the Americans with Disabilities Act (ADA) may limit your ability to terminate a child if the child has a disability. For more information about the ADA, see CCLC's articles *Caring for Children with Special Needs*, 2003 Revised Edition, and *Legal Aspects of Caring for Sick and Injured Children*, 2003 Revised Edition, both of which are in this Handbook.

<sup>32</sup> *Id.*

<sup>33</sup> For more information on releasing children in care, see CCLC's article, *Releasing Children (Custody and Intoxicated Parents)*, 2003 Revised Edition of this Handbook.