



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 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.³

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.

You can get a license to care for up to eight children in a small family child care home.⁴ 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.⁵

If you have a large family child care home, you can get a license for up to fourteen children.⁶ 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.⁷

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.⁸ 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.*⁹
- *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.*¹⁰
- *If you already have a family child care home, but have never told your landlord, you are required to give notice immediately.*¹¹

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.¹² 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 or if the landlord’s family is moving into the rental unit.

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.¹³ Also, 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.”¹⁴ 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).¹⁵

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.¹⁶ 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.¹⁷

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.¹⁸

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.

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 CALIFORNIA CHILD CARE RESOURCE AND REFERRAL NETWORK, THE CALIFORNIA CHILD CARE PORTFOLIO 1999 (1999).

² Cal. Health & Safety Code § 1597.40 (b).

³ Cal. Health & Safety Code § 1597.40 (b).

⁴ Cal. Health & Safety Code § 1597.44.

⁵ Cal. Health & Safety Code § 1597.44 (d).

⁶ Cal. Health & Safety Code § 1597.465.

⁷ Cal. Health & Safety Code § 1597.465 (d).

⁸ Cal. Health & Safety Code § 1597.40 (d).

⁹ Cal. Health and Safety Code § 1597.40 (d)(1).

¹⁰ Cal. Health and Safety Code § 1597.40 (d)(2).

¹¹ Cal. Health and Safety Code § 1597.40 (d)(3).

¹² Cal. Health and Safety Code § 1597.40 (b); Cal. Civil 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.)

¹³ 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.)

¹⁴ Cal. Health and Safety Code § 1597.40(d)(4).

¹⁵ Cal. Civil Code § 1950.5 (c).

¹⁶ Cal. Health & Safety Code § 1597.40 (b).

¹⁷ Cal. Health & Safety Code § 1597.531 (a).

¹⁸ Cal. Health & Safety Code § 1597.531 (b).