

## Know the Law about Family Child Care Homes in California Rental Property

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### 1. Can my landlord or Homeowner Association stop me from caring for children in my home?

No. Your landlord cannot stop you from caring for up to 6 children if you have a small family child care home license or up to 12 children if you have a large child care home license.<sup>1</sup>

If your lease says you cannot have a family child care home, that part of the lease is void. That means your landlord cannot enforce it.<sup>2</sup> If your lease says you cannot run a business from your rental home, that part of the lease does not apply to your family child care home. In California, a family child care home is a residential use of property. It is not considered a business or commercial use for renting/leasing purposes.<sup>3</sup>

### 2. If I am renting/leasing an apartment, can I still have a family child care home?

Yes. You may operate a family child care home while living in all types of residential homes:

- Single-family home
- Apartment
- Condominium
- Townhome
- Duplex
- A unit in all other types of multi-family buildings<sup>4</sup>

If you are renting/leasing a unit in an apartment building or other type of multifamily dwelling, your landlord cannot stop you from opening or running a family child care home just because you live in one of these types of homes.<sup>5</sup> This is true even if your rental agreement/lease says “no businesses” or “no commercial uses.” In

California, a family child care home is a residential use of property. It is not considered a business or commercial use for renting/leasing purposes.<sup>6</sup>

### 3. Can my landlord evict me for having a family child care home?

No. It is illegal for your landlord to evict you only because you have a family child care home. Your landlord cannot stop you from providing licensed family child care for up to 6 children if you are licensed for a small family child care home or 12 children if you are licensed for a large family child care home.<sup>7</sup> However, you still need to follow all the rules in your lease. Your landlord can still evict you for another reason, such as not paying your rent on time or damaging the property.

Even if your landlord gives you a “no cause” eviction notice, it is illegal for your landlord to evict you if the real reason is because you have a family child care home.

Save copies of any written communication—letters, notes, and notices—with the landlord or anyone else (such as a property manager, leasing agent, or real estate agent) about your rental property. Keep a written log, including date and description, of all conversations you have with your landlord.

### 4. Can a landlord refuse to rent to me when I’m applying for a place to live?

No. It is illegal for a landlord to refuse to rent to you just because you have or plan to open a family child care home.<sup>8</sup>

### **5. Do I need to tell my landlord about my family child care home?**

Yes. Whether you have a small or large family child care, you must tell your landlord in writing that you plan to open or that you currently have a family child care home.<sup>9</sup> But that does not mean that your landlord can prevent you from having a family child care home.

Use the Property Owner/Landlord Notification Family Child Care Home form (LIC 9151) from the Community Care Licensing Division to tell your landlord.

Here is the link to the form:

<https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9151.pdf>

### **6. When do I need to tell my landlord about my family child care home?**

If you are going to open a family child care home, you must tell your landlord in writing at least 30 days before you start providing child care.<sup>10</sup>

If you already have a family child care home but you are moving to a new home, you can ask your Community Care Licensing Program Analyst, also called an LPA, when you have to tell your landlord. Sometimes the amount of time required for you to tell your landlord can be fewer than 30 days because it might take less time to transfer your license to your new home.<sup>11</sup>

### **7. Can I care for 2 additional school-aged children in my small family child care home if I am renting/leasing?**

Yes. If you have a small family child care home, you can care for up to 8 children if you meet all of these requirements:

- Your landlord has signed the Property Owner/Landlord Consent Form (LIC 9149), giving you permission to care for

- more than 6 children and up to 8 children;
- The additional 2 children must be enrolled and attending T-Kindergarten, kindergarten, or elementary school, and at least 1 of them must be at least 6 years old;
- No more than 2 infants are in your care when more than 6 children are present; and,
- You told the families of all the children enrolled in your program that you are going to care for the additional 2 school-age children. The [Parent Notification – Additional Children in Care Form \(LIC 9150\)](#) must be signed by the parent or guardian of each child and filed in each enrolled child’s licensing file.<sup>12</sup>

The form for your landlord giving you permission to care for more than 6 and up to 8 children, is available at:

<https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9149.pdf>

If your landlord does not give you permission, you can still care for up to 6 children in your small family child care home without this permission. You can also get a license to run a large family child care home and care for up to 12 children without your landlord’s permission.

### **8. Can I care for 2 additional school-aged children in my large family child care home if I am renting/leasing?**

Yes. If you have a large family child care home, you can care for up to 14 children if you meet all of these requirements:

- Your landlord has signed the Property Owner/Landlord Consent Form (LIC9149), giving you permission to care for more than 12 children and up to 14 children;
- The additional 2 children must be enrolled and attending T-Kindergarten, kindergarten, or elementary school, and at least one of them must be at least 6 years old;

- No more than 3 infants are in care when more than 12 children are present; and,
- You told the families of all the children enrolled in your program that you are going to care for the additional two school-age children. The [Parent Notification—Additional Children in Care Form \(LIC 9150\)](#) must be signed by the parent or guardian of each child and filed in each enrolled child’s licensing file.<sup>13</sup>

The form for your landlord to give you permission to care for more than 12 and up to 14 children, is available at:

<https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9149.pdf>.

If your landlord does not give you permission, you can still care for up to 12 children in your large family child care home without their permission.

### **9. Can my landlord tell me what days and hours I am allowed to operate my family child care home?**

No. You can offer day, evening, and weekend child care if you choose. The law says landlords cannot “restrict” how you run your family child care home.<sup>14</sup>

You must still follow the rules that apply to everyone else in their rental/lease agreement. For example, you must follow your rental/lease agreement and pay your rent on time.

### **10. Can my landlord raise my rent because I have a family child care home?**

No. It is illegal for your landlord to raise your rent *only* because you have a family child care home.<sup>15</sup> However, your landlord can raise your rent for other reasons. Any rent increase must comply with local rent control laws.

### **11. Can my landlord require a larger security deposit because I have family child care home?**

Yes. If your landlord wants, they can increase your security deposit at the beginning of your lease agreement or when they find out you have family child care home.<sup>16</sup> The maximum security deposit a landlord may charge a family child care provider is 2 months’ rent for an unfurnished unit or 3 months’ rent for a furnished unit.<sup>17</sup>

The landlord can make a family child care provider pay the maximum security deposit, but not more than that. The landlord can do this even if they let other tenants pay less than the maximum security deposit.

### **12. Can my landlord require me to purchase liability insurance?**

No. Your landlord cannot make you buy liability insurance. The law says that family child care providers don’t *have* to get liability insurance.

The law also says landlords cannot place restrictions on family child care homes.<sup>18</sup> If your landlord told you that you had to get liability insurance, your landlord would be putting a restriction on how you run your family child care home.

Your landlord might worry that their own insurance will be canceled or not renewed because you have a family child care home. But the law says that insurance companies cannot do that. An insurer can cancel standard residential property liability insurance only for certain reasons. The addition of a family child care home on the property is not a reason for cancellation or nonrenewal.<sup>19</sup> Tell your landlord about this law.

If you decide to get liability insurance, you must inform all the parents and guardians of the children you care for. If you choose *not* to get liability insurance, you must inform all parents

and guardians, *and* they all must sign the Affidavit Regarding Liability Insurance for Family Child Care Homes form (LIC 282) from Community Care Licensing. The law gives you the option of having liability insurance or having the forms signed instead.

If you don't want to purchase insurance, make sure you follow all the rules for getting signed affidavits. You have to get signed statements from the parent(s) or guardian(s) for each child in care.<sup>20</sup> The affidavits must say your landlord's insurance and/or your rental insurance won't cover child care-related incidents.<sup>21</sup> You must keep a file of the signed affidavits in each child's file. The affidavits are private documents, only to be shared with Community Care Licensing. You should not show them or give them to your landlord.

The Child Care Law Center *highly recommends* that you get liability insurance for several reasons. The parent affidavits do not protect you from being sued. A parent is signing the affidavit to say that they are aware you do not have liability insurance. Your landlord's homeowner's insurance policy or your renter's insurance policy does not cover liability arising from a family child care. You would need a separate policy or endorsement to cover your family child care.<sup>22</sup>

### **13. Can my landlord or Homeowner Association demand to be added to my liability insurance policy?**

Yes, but *only* if all the following conditions are met:

- You already have or are getting a liability insurance policy;
- Your landlord or HOA asks in *writing* to be added to your policy;
- Your policy will not be canceled if you add your landlord or HOA; and,
- Your landlord or HOA will pay the additional amount if adding them causes you to pay a higher premium.<sup>23</sup>

### **14. How can I foster good relations with both my landlord and the neighborhood?**

Landlords might not understand the difference between a family child care home and a child care center. They might imagine streams of children disturbing other tenants and running around, but family child care providers tend to be very good tenants. You can predict common concerns and talk about them with your landlord.

Your landlord might be worried about wear and tear of their rental. You can explain that as a family child care provider, you need your home to be an attractive and safe environment, both to appeal to families and because you are subject to Community Care Licensing annual unannounced inspections. So you have an incentive to protect against wear and tear of the property. Also, your landlord can use your security deposit to cover any excessive wear and tear when you move.

Your landlord may worry about children being left alone. You can tell them that children are not left unsupervised in family child care. Point out that your license requires regular supervision of all children in your care.<sup>24</sup>

Your landlord might worry about noise. You could offer to keep the children indoors in the early morning and the late evening. Also, make sure the landlord understands that your license limits the number of children in your care.

Explain that traffic should not create a problem because only a few families take part in the program and families do not typically drop off or pick up at the same time.

Explain that family child care providers do not bathe children in care so increased water use should not be a problem. You can also offer to make extra efforts to conserve water and energy.

**15. What can I do if my landlord tries to evict me or raise my rent in violation of the law?**

If you receive an eviction notice or a notice to increase your rent, and you believe the reason for the notice is because of your family child care, contact your local tenant’s rights organization immediately. Also, it is always a good idea to consult with a lawyer before you respond to your landlord.

It is *illegal* for your landlord to evict you or raise your rent ONLY because you have a family child care home. You have the right to file a housing complaint with the Department of Fair Employment and Housing.

Check all notices and papers for deadlines. You usually must respond very quickly to eviction notices or court papers. An eviction notice with a 3-day deadline means that your landlord could file a case to evict you after 3 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 5 days.

**16. What can I do if my landlord tries to restrict my family child care home or prevent me from having a family child care home?**

If you feel as though your landlord is violating your rights as a family child care provider, you have the right to file a housing complaint with the Department of Fair Employment and Housing. Information about filing a complaint

can be found here:

<https://www.dfeh.ca.gov/complaint-process/file-a-complaint/>

If you file a complaint with the Department of Fair Employment and Housing, please contact the Child Care Law Center so we can help make sure your complaint is handled correctly.

If you are being prevented from having a family child care home, please submit your legal question online at [www.childcarelaw.org/help](http://www.childcarelaw.org/help) or contact the Child Care Law Center at 415-558-8005 extension 1.

**17. Where can I find more resources for tenants?**

Visit [LawHelpCalifornia.org](http://LawHelpCalifornia.org) if you are a tenant with a low income and you have received a notice of eviction or illegal rent increase from your landlord.

Search online for the tenant rights organization nearest you. California has many nonprofit community-based housing rights organizations.

Call your County Bar Association Lawyer Referral Service to find a private attorney or free legal services if you are low income.

The California Department of Consumer Affairs Guide “[California Tenants](#)” is available at [www.dca.ca.gov](http://www.dca.ca.gov).

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**This publication is intended to provide general information about the topic covered.** It is made available with the understanding that the Child Care Law Center is not engaged in rendering legal or

other professional advice. We believe it is current as of March 2020, but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.

## Endnotes

These endnotes provide legal citations for the information above. Do not hesitate to look up the law and know your rights. Visit your local law library to look up the laws that apply to you, and ask the reference librarian for help if you are having trouble understanding these citations.

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<sup>1</sup> Family child care homes are regulated by the Community Care Licensing Division of the California Department of Social Services. <https://www.cde.ca.gov/sp/cd/re/caqfamcchomes.asp>

<sup>2</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(a\)-\(c\)](#).

<sup>3</sup> [CAL. HEALTH & SAFETY CODE § 1597.43\(a\)](#) (“Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses.”)

<sup>4</sup> [CAL. HEALTH & SAFETY CODE § 1596.78\(d\)](#).

<sup>5</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(a\)-\(c\)](#).

<sup>6</sup> [CAL. HEALTH & SAFETY CODE § 1597.43\(a\)](#) (“Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses.”)

<sup>7</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(a\)-\(c\)](#); [Cal. Civil Code § 1942.5\(a\)](#) (eviction or threat of eviction in retaliation for a tenant’s lawful and peaceable exercise of any legal right is a violation of law).

<sup>8</sup> [CAL. HEALTH & SAFETY CODE § 1597.41](#).

<sup>9</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(d\)\(1\)](#). An applicant for a family child care home license must certify under penalty of perjury that the applicant has given notice to their landlord. See FCCH license application at (10)(G): <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC279.pdf>.

<sup>10</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(d\)\(1\)](#).

<sup>11</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(d\)\(2\)](#).

<sup>12</sup> [CAL. HEALTH & SAFETY CODE § 1597.44](#).

<sup>13</sup> [CAL. HEALTH & SAFETY CODE § 1597.465](#).

<sup>14</sup> [CAL. HEALTH & SAFETY CODE § 1597.41](#).

<sup>15</sup> [CAL. CIVIL CODE § 1942.5\(c\)](#) (it is illegal to increase the rent in retaliation for a tenant’s lawful and peaceable exercise of any legal right).

<sup>16</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(d\)\(4\)](#).

<sup>17</sup> [CAL. CIVIL CODE § 1950.5\(c\)](#).

<sup>18</sup> [CAL. HEALTH & SAFETY CODE § 1597.41](#).

<sup>19</sup> [CAL. INS. CODE § 676](#). If the landlord’s homeowner’s insurance policy has been in effect for at least 60 days, or is a renewal policy, it may be canceled or not renewed only for: premium nonpayment, conviction of the named insured of a crime, fraud, grossly negligent acts, or omissions or physical changes in the insured property which result in the property becoming uninsurable.” The opening of a family child care home is not considered a “physical change in the insured property” justifying cancellation or nonrenewal.

<sup>20</sup> [CAL. HEALTH & SAFETY CODE § 1597.531\(a\)](#).

<sup>21</sup> [CAL. HEALTH & SAFETY CODE § 1597.531\(a\)](#).

<sup>22</sup> [CAL. INS. CODE § 676.1\(c\)](#) (“It shall be against public policy for a residential property insurance policy to provide coverage for liability for losses arising out of, or in connection with, the operation of a family day care home. This coverage shall only be provided by a separate endorsement or insurance policy for which premiums have been assessed and collected.”).

<sup>23</sup> [CAL. HEALTH & SAFETY CODE § 1597.531\(b\)](#). These same liability insurance rules apply when a family child care home is operating on premises which share common space that is governed by a homeowner association.

<sup>24</sup> [CAL. HEALTH & SAFETY CODE § 1596.78](#).