

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

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### 1. What is a licensed family child care home?

A licensed family child care home is child care that takes place in a provider's home. The family child care provider may rent, lease, or own their home.

Parents often choose family child care because of its nurturing home environment, flexible hours, and a convenient location in their neighborhood. Family child care homes serve as the primary source of care for babies and toddlers. Many family child care providers also meet the diverse cultural and linguistic needs of California's families.

Family child care homes are regulated by the Community Care Licensing Division of the California Department of Social Services, also called Child Care Licensing. Family child care providers must comply with state health, safety, and fire standards.

Family child care provides vital support to children, families, and our communities. However, there are not enough licensed family child care homes in California. Because of this, California has a state law that includes housing protections for family child care providers living in rented or leased homes.<sup>1</sup>

### 2. Must a tenant inform a landlord that the tenant is providing or will provide family child care in a rental unit?

Yes. [Section 1597.41\(d\) of California's Health and Safety Code](#) requires tenants to give their landlords this information.<sup>2</sup>

### 3. Does a tenant need to get a landlord's permission to provide family child care?

No, if the tenant cares for up to six children in a small family child care home or up to twelve children in a large family child care home. [Health and Safety Code Section 1597.41\(a\)-\(c\)](#) prohibits any restriction on the use of rental property for family child care. Therefore, under California law, a landlord's permission is not required.

*However*, if a tenant wants to exercise their "plus 2" option under Health and Safety Code Sections [1597.44](#) and [1597.465](#) to care for two additional school-aged children—up to eight in a small family child care home or up to fourteen in a large family child care home—the tenant must get the landlord's permission to care for the additional children beyond six or twelve.<sup>3</sup>

Otherwise, it is *illegal* in California for a landlord to attempt to prohibit a tenant from operating a licensed family child care home or to try to evict a tenant who does so.<sup>4</sup> Landlords have no legal authority to prohibit family child care.

Landlords cannot use a lease or other contract to restrict or prohibit a tenant from operating a licensed family child care home. Even if the tenant signs it, that section of the lease or contract would be void under the law and is unenforceable.<sup>5</sup>

A landlord also cannot refuse to rent to someone only because that person wants to operate a family child care home.<sup>6</sup>

#### 4. Is operating a family child care home a “business” use of property?

No. California law says that family child care homes are residential use of property, not a business or commercial use of property.<sup>7</sup> Therefore, even if a rental agreement or lease says the rental unit may be used only as a residence, that provision offers no basis for prohibiting family child care, which the law considers a [residential use of property](#), not a business one.<sup>8</sup>

#### 5. May a tenant operate a family child care home in any type of rental unit?

Yes. A tenant may operate a family child care home in any dwelling in which he or she resides, whether a single family house or an apartment in a multi-unit dwelling. The law equally protects tenants who provide family child care regardless of the type of rental unit.<sup>9</sup>

Landlords need not be concerned about whether the unit is appropriate for child care, because the [Community Care Licensing Division](#) will periodically inspect the site and will make that determination.<sup>10</sup>

#### 6. May a landlord require a family child care provider to carry liability insurance?

No. A landlord may not require the tenant to obtain child care liability insurance as a condition of renting the property. Tenants may voluntarily purchase liability insurance for the child care, but they are not legally obligated to do so. [Section 1597.531 of the Health and Safety Code](#) allows family child care providers to choose among three alternatives: obtaining liability insurance, obtaining a bond, or having parents sign affidavits stating that they are aware the child care does not have liability insurance. If the provider lives in rental housing, the affidavit must also state that any liability insurance held by the landlord may not cover losses arising out of the operation of the family child care

home.<sup>11</sup> Having the signed affidavits does not limit the provider’s liability.

If a tenant who provides family child care does have liability insurance, the landlord may ask to be added to the policy as an additional, named insured. The tenant must comply, if the following conditions are met:

- The family child care provider already has liability insurance or is planning to purchase liability insurance;
- The landlord makes the request in writing;
- Adding the landlord does not result in cancellation or nonrenewal of the policy; and
- The landlord *pays any additional premium* that is caused by adding the landlord to the policy.<sup>12</sup>

#### 7. Will the operation of a family child care home negatively affect a landlord’s insurance coverage?

No. [Section 676.1 of the California Insurance Code](#) explicitly prohibits insurers from canceling or refusing to renew insurance policies because of the operation of a family child care home on the premises.<sup>13</sup>

#### 8. May a landlord evict a tenant for operating a family child care home?

No. As noted earlier, the law explicitly [protects the operation of family child care](#) in residential property, and so a landlord may not evict a tenant *solely* for operating a family child care home.<sup>14</sup> However, a landlord may evict a tenant for a *valid* reason such as failing to pay rent, violating another lease term, or if the landlord plans to move into the rental unit.

Even if a landlord give a “no cause” eviction notice, it is illegal for the landlord to evict a tenant if the real reason is because the tenant operates or plans to operate a family child care home.

**9. May a landlord increase rent because a tenant is providing family child care?**

No. Landlords may not charge additional rent simply because a tenant operates a family child care program.<sup>15</sup> Such rent increases constitute “source of income” discrimination in violation of California’s [Fair Housing and Employment Act](#).<sup>16</sup> A landlord can raise rent for other reasons. But any rent increases must fall within amounts permitted under state and local rent control laws.

**10. Will a family child care home disturb neighbors, cause wear and tear to property, and increased operating costs?**

Because they may fail to distinguish a family child care home from a child care center, landlords may envision streams of children disturbing other tenants and running about. A landlord should remember that a family child care license limits the number of children in care and requires continual supervision of all of children in care.<sup>17</sup>

Many providers include in policies distributed to parents the need to be respectful of neighbors when dropping off and picking up children. Most child care providers plan activities for children that consider and respect the needs of other tenants.

Because state law prohibits any restrictions on use of rental property for family child care, a landlord may not limit the hours that care is provided; the provider is free to decide whether or not to offer evening or weekend care. Program flexibility and small group size are just some of the factors that parents look for in family child care.

Landlords are sometimes concerned about increased costs from the use of utilities, water, power, or additional garbage generated by the

family child care home. In fact, the amount of increased energy from a family child care home is likely negligible. Providers normally do not bathe the children in their care or wash their clothes. While the provider is under no legal obligation to cover these added costs, the provider may offer to meet any increased costs or share them with the landlord. Many providers learn about and practice water and energy conservation and recycling to demonstrate concern for these issues.

Landlords may be concerned about additional wear and tear on the home. Tenants who are family child care providers have a strong incentive to maintain an attractive and safe environment, both to appeal to families who may place their children in care and because they are subject to unannounced California Child Care Licensing inspections.

However, no tenant is expected to live in a home without some wear and tear. If a tenant pays a security deposit, those funds may be used specifically for repairs beyond normal wear and tear or cleaning, should they be necessary when the tenant moves. A landlord may require a reasonable security deposit, but [California Civil Code Section 1950.5](#) limits the amount two months’ rent on an unfurnished home, whether it is called a cleaning deposit or security deposit.

Family child care providers strive to offer a safe and well-maintained environment for children, in compliance with the licensing regulations. Repairs are important, especially if the health or safety of the children in care is threatened. In fact, prompt repairs by the landlord will reduce the risk of liability for both the landlord *and* the tenant.

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**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> In passing the California Child Day Care Facilities Act, the California legislature declared its intent “that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development.” [CAL. HEALTH & SAFETY CODE § 1597.40\(a\)](#). Senate Bill 234 improved and strengthened protections for family child care providers who operate out of a rented home. Senate Bill 234 went into effect on January 1, 2020. Family Daycare Homes, SB-234, 2019–20 Sess., ch. 244 (Cal. 2019) (enacted).

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

<sup>3</sup> [CAL. HEALTH & SAFETY CODE § 1597.44](#); [CAL. HEALTH & SAFETY CODE § 1597.465](#).

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

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

<sup>6</sup> [CAL. HEALTH & SAFETY CODE § 1597.41\(b\)](#).

<sup>7</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>8</sup> [CAL. HEALTH & SAFETY CODE § 1597.43\(a\)](#).

<sup>9</sup> [CAL. HEALTH & SAFETY CODE § 1596.78\(d\)](#).

<sup>10</sup> [CAL. HEALTH & SAFETY CODE § 1597.55a](#).

<sup>11</sup> [CAL. HEALTH & SAFETY CODE § 1597.531](#).

<sup>12</sup> [CAL. HEALTH & SAFETY CODE § 1597.531\(b\)](#).

<sup>13</sup> [CAL. INS. CODE § 676.1\(a\)-\(b\)](#); *See also* [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 only be canceled or not renewed 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>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. GOV’T CODE § 12955\(p\)\(1\)](#) defines “source of income” as “lawful, verifiable income paid directly to a tenant, or to a representative of a tenant”; licensed family child care is a lawful source of income because it is paid directly to the child care provider in exchange for the care of children.

<sup>17</sup> [CAL. HEALTH & SAFETY CODE § 1596.78](#).