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Things California Homeowner Associations Should Know about Family Child Care Homes

A family child care home is where a child care provider takes care of children for periods of less than 24 hours per day in their own home. Small family child care home providers take care of up to 8 children, and large family child care home providers take care of up to 14 children.¹

1) HOAs Must Allow Family Child Care Homes

Under California law, family child care homes are a residential use of property, not a business use.² To encourage family child care in residential areas, the law makes it illegal for Homeowner Associations (“HOAs”) and landlords to restrict or prohibit family child care homes.³ For example, Covenants, Conditions, and Restrictions (“CC&Rs”) that prohibit the use of homes as a “business” **cannot** be applied to family child care homes.⁴ Any portion of a lease, contract, or other agreement that restricts someone from using property as a family child care home is void and unenforceable.⁵

The law also prohibits HOAs from deciding not to sell or rent to an applicant only because they are a family child care home provider.⁶

2) State Licensing Regulates Family Child Care Homes

The California Department of Social Services, Community Care Licensing Division (“Licensing”) is the state agency that regulates and monitors the licensing of all child care.⁷

The law gives Licensing exclusive responsibility for:

- Inspecting and deciding whether a family child care home meets all state health and safety requirements to be licensed;

- Regulating the number of children that can be cared for in a home;
- Certifying the hours of child care operation; and,
- Conducting ongoing inspections.

3) HOAs Cannot Regulate Family Child Care Homes

Under state law, HOAs cannot regulate the use of family child care homes, either in writing or by actions. For example, HOAs cannot require that a family child care home operate only from 9 am to 5 pm, or care for only 5 children.

HOAs also **cannot** make special rules that apply **only** to family child care homes. HOA rules that apply to family child care homes must apply equally to all other residences. For example, if an HOA has a rule about where children are allowed to play in the common areas, the same rule must apply to all residents, not to only family child care homes.

4) HOAs Can Ask to Be Added to a Family Child Care Provider’s Insurance Policy

If a family child care provider already has or is planning on getting a child care insurance policy, they must add the HOA or property owner to their child care insurance policy or bond *if* the following conditions are met:

- (1) The child care provider already has child care insurance;
- (2) The HOA or property owner makes a written request to be added to the policy;
- (3) The addition of the property owner or the homeowner association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home; and
- (4) Any additional premium assessed for this coverage is paid by the HOA or property owner.⁸

5) Family Child Care Providers Are *Not* Required to Have Insurance

The law does not require family child care providers to have insurance. The Child Care Law Center does strongly encourage child care providers

to buy it. If an HOA is concerned about a family child care provider not having insurance, the HOA could work with the child care provider to help pay for the insurance.

Under state law, residential property insurance will *not* cover for liability or losses arising out of, or in connection with, the operation of a family child care home. This kind of coverage can only be covered under a separate insurance policy.⁹

6) An HOA Insurance Policy Cannot be Cancelled Because of a Family Child Care Home

California law prohibits insurers from canceling an insurance policy that has been in effect for 60 days or a renewal policy because of the operation of a family child care home on the premises.¹⁰

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 February 2020 but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.

¹ [CAL. HEALTH & SAFETY CODE § 1596.78.](#)

² [CAL. HEALTH & SAFETY CODE §§ 1597.40; 1597.43\(a\).](#) Cal. Health & Safety Code § 1598.40 announces that the express intent of the Legislature in enacting Section 1597.30 *et seq.* was that “family day care homes for children should be situated in normal residential surroundings so as to give children the home environment that is conducive to healthy and safe development.” The Legislature declared “this policy to be of statewide concern with the purpose of occupying the field” and that this act “shall preempt local laws, regulations, and rules governing the use and occupancy of family daycare homes.” Cal. Health & Safety Code § 1597.43(a) explains that the operation of a licensed family child care homes is a residential use of property, not a business use of property.

³ [CAL. HEALTH & SAFETY CODE § 1597.41\(a\)-\(c\).](#)

⁴ [CAL. HEALTH & SAFETY CODE § 1597.43\(a\);](#) *Barrett v. Dawson*, 61 Cal. App. 4th 1048, 1051–52, 01 (1998). *See also* [CAL. HEALTH & SAFETY CODE § 1597.41\(a\)-\(c\).](#)

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

⁶ [CAL. HEALTH & SAFETY CODE § 1597.41\(b\)](#) (“An attempt to deny, restrict, or encumber the conveyance, leasing, or mortgaging of real property for use or occupancy as a family daycare home is void.”). [CAL. GOV’T CODE § 12955](#) (prohibiting housing discrimination based on “source of income”). *See also* *Sisemore v. Master Fin., Inc.*, 151 Cal. App. 4th 1386, 1393, 1410–11, 1426 (2007). (Licensed family day care provider established viable

discrimination claims against a mortgage lender that refused the family day care provider’s loan application to purchase a home under the Unruh Act, Fair Employment and Housing Act (FEHA), and Unfair Competition Law (UCL). This case clarified that a family day care home provider bringing a FEHA claim for discrimination based on “source of income” is not limited to only renters, but also to applicants who apply to purchase a home.)

⁷ [CAL. HEALTH & SAFETY CODE § 1597.30-.622](#) (licensing provisions). CAL. DEP’T OF SOC. SERVS., COMMUNITY CARE LICENSING DIVISION, <https://www.cdss.ca.gov/inforesources/childrens-residential/resources-for-providers/facility-information>

⁸ [CAL. HEALTH & SAFETY CODE § 1597.531.](#)

⁹ [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.”).

¹⁰ [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 non-renewal.