



# CHILD CARE LAW CENTER

445 CHURCH STREET | 4<sup>TH</sup> FLOOR | SAN FRANCISCO, CA 94114 | 415.558.8005  
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

## Know the Law About Family Child Care Homes In California Rental Property

---

When someone cares for a small number of children in her own home and has a state-issued license to do so, she is a “family child care provider” operating a “family child care 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 convenient location. Licensed family child care homes provide care to about one-third of California’s children in care, making family child care an important source of licensed care<sup>1</sup>

In recognition of family child care’s importance, and that there is not enough licensed family child care homes in California, the Legislature has passed laws to protect the right of tenants to provide licensed family child care in the home that they rent.<sup>2</sup> Below are answers to many common questions about these rules and laws.

### **I live in California and rent my home. May my landlord stop me from providing licensed family child care?**

No. According to [the California Child Day Care Facilities Act](#), your landlord may *not* stop you from providing family child care for *six* or fewer children in a small family child care home or *twelve* or fewer children in a large family child care home. You may operate a family child care home in any rental dwelling in which you reside, regardless of the type of unit (single-family house, apartment, etc.).<sup>3</sup> This is true even if your lease says “no businesses” or “no commercial uses.”

[Section 1597.40\(b\)](#) of the Health and Safety Code says that such lease provisions are void if the landlord tries to use them to stop you from operating a licensed family child care home. In other words, California law treats family child care as a residential use of property, not a business use.

The same provision of the law also prohibits a landlord from limiting the hours that you can provide care. Therefore, you are free to decide whether to offer evening or week-end care.

### **Must I tell my landlord about my family child care home?**

Yes. No matter how many children you care for, the [same law](#) that says your landlord may not *prohibit* you from providing family child care requires you to *inform* your landlord in writing that you are operating, or plan to operate, a family child care home.<sup>4</sup> [Here](#) is a link to a form prepared by the Department of Social Services that you may use to inform your landlord.

### **When must I 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 in writing [30 days before](#) you start providing child care.<sup>5</sup>
- If you *already have a family child care home but you are moving to a new house or apartment*, ask your Community Care 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.<sup>6</sup>

**May my landlord limit the number of children I care for to six or twelve?**

Yes. You can be licensed to care for up to eight children in a *small* family child care home if you meet [certain conditions](#), but you will need your landlord's written permission to care for more than six.<sup>7</sup>

Similarly, under [certain conditions](#) you can be licensed to care for up to fourteen children in a *large* family child care home, but you need your landlord's written permission to care for more than twelve.<sup>8</sup>

The form for your landlord to give his or her consent is available [here](#). If your landlord refuses 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.

**Does my family child care home give my landlord grounds to evict me?**

No. As discussed above, your landlord may not stop you from providing licensed family child care for six or twelve children; this means that providing licensed child care is not a basis for eviction.<sup>9</sup> However, you should be extra careful to comply with all of the other provisions in your lease, because a landlord still may evict you for another reason, like not paying rent on time or violating some other lease term.

If your city does not have an eviction-control ordinance, your landlord may evict you without stating any reason as long as he or she gives a proper 30-day notice at the end of the lease term. However, if the real reason for the eviction is that you provide family child care the landlord may not use this "no-cause" option as

an excuse to evict you.

**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 [not because you operate a family child care home](#).<sup>10</sup> Increasing your rent for that reason would violate California's [Fair Housing and Employment Act](#) by discriminating against you on the basis of your "source of income."<sup>11</sup> Such an increase could also discriminate on the basis of gender or "familial status," which fair housing law prohibits as well. Finally, any rent increase must comply with local rent control laws.

**May my landlord require a larger security deposit from me than from other tenants, because of my family child care home?**

Yes. The Health and Safety Code ([Section 1597.40\(d\)\(4\)](#)), allows a landlord, "upon commencement of, or knowledge of, the operation of a family [child] care home on his or her property" to charge a family child care provider the maximum security deposit that is legal, even if the landlord charges other tenants less.<sup>12</sup> The maximum security deposit a landlord may charge is two months' rent for an unfurnished unit or three months' rent for a furnished unit.<sup>13</sup>

**May my landlord require me to purchase liability insurance?**

No. Because of the [law](#) prohibiting landlords from imposing restrictions on family child care homes, your landlord may not require you to get liability insurance for your family child care home.<sup>14</sup> The Child Care Law Center *highly recommends* that you get liability insurance for your family child care, but the law [provides for alternatives](#) and if you follow the procedure for obtaining the required signed parental statements, you may choose not to have liability insurance. If a family child care provider

chooses not to purchase liability insurance, she must obtain parents' signed affidavits that they are aware the program doesn't have liability insurance.<sup>15</sup> If you live 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. You should keep a file of these signed affidavits.

A landlord's or homeowner's insurance policy does not cover liability arising from family child care; you would need a separate policy or endorsement for such coverage. If your landlord is concerned about cancellation or refusal to renew his or her own insurance policy because of your family child care home, inform the landlord that the law prohibits the insurer from cancelling or not renewing the landlord's insurance because a family child care is operating on the premises.<sup>16</sup> An insurer can only cancel standard residential property liability insurance if certain conditions have been met, and the addition of a child care home on the property is not a reason for cancellation or non-renewal.<sup>17</sup>

### **May my landlord or Homeowner's 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 cancelled because you added your landlord; and
- your landlord pays any additional premium due to being added to the policy.<sup>18</sup>

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

Landlords may not understand the difference between a family child care home and

a child care center, and may imagine streams of children disturbing other tenants and running about. However, family child care providers tend to be very good tenants. You may want to anticipate certain concerns and explain to the landlord the nature of your operation:

If the landlord is worried about *noise*, you might offer to keep the children indoors in the early morning and the evening. Also, make sure the landlord understands that your license limits the number of children in your care.

Children are not left unsupervised in family child care. Point out that your license requires regular supervision of the small number of children in your care.<sup>19</sup>

Explain that traffic should not create a problem because only a few families participate in the program, and offer to stagger pickup and drop off times.

*Increased water or energy* use is unlikely because the children will not be bathed while in your care, nor will you be preparing meals. Offer to make extra efforts to conserve energy.

As a family child care provider you want your home to be an attractive and safe environment, both to appeal to families and because you are subject to Community Care Licensing inspections, and that you therefore have an incentive to protect against wear and tear of the property. Your security deposit may be used to cover any excessive wear and tear when you move.

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

- Save copies of any written communication with the landlord or anyone else about your rental property—letters, notes, and notices. Keep a written log, including date and description, of all conversations you have with your landlord.

## Know The Law About Family Child Care Homes in Rental Property in California

- 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 want to challenge an eviction, continue to pay rent or keep the money in a separate bank account.

---

**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 October 2016 but the law changes often. If you need legal advice, you should seek help from a competent attorney.**

Permission to reproduce, transmit or disseminate this information may be requested by mail or email: [info@childcarelaw.org](mailto:info@childcarelaw.org)

### Useful Resources for Tenants

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

Search online for the tenants’ rights organization nearest you. California has many non-profit 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 Consumers Affairs Guide [“California Tenants”](http://www.dca.ca.gov) is available at [www.dca.ca.gov](http://www.dca.ca.gov)

---

<sup>1</sup>For data on the types of child care, supply and demand published annually by the California Child Care Resource & Referral Network, see, the [2015 Child Care Portfolio](http://www.rnetwork.org) at [www.rnetwork.org](http://www.rnetwork.org).

<sup>2</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\(a\)](#).

<sup>3</sup> Statutory language, legislative history, and public policy considerations all support the view that the Health and Safety Code protects tenants who operate family child care homes in both single-family houses and multi-unit dwellings. [Morrison v. Vineyard Creek, L.P. et al.](#) Contact the Child Care Law Center for details of the underlying settlement in *Morrison*.

<sup>4</sup> [Cal. Health & Safety Code § 1597.40\(d\)\(1\)](#). An applicant for a family child care home license must certify under penalty of perjury that the applicant has given notice to his/her landlord. See FCCH license application at (10)(G): <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC279.pdf>.

<sup>5</sup> [Cal. Health & Safety Code § 1597.40\(d\)\(1\)](#).

<sup>6</sup> [Cal. Health & Safety Code § 1597.40\(d\)\(2\)](#).

<sup>7</sup> [Cal. Health & Safety Code § 1597.44](#).

<sup>8</sup> [Cal. Health and Safety Code §1597.465\(d\)](#).

<sup>9</sup> [Cal. Health & Safety Code § 1597.40\(b\)](#); [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>10</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>11</sup> [Cal. Gov’t. Code § 12955](#). Section 12955(p) defines “source of income” as “lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.” This definition encompasses income earned from operating a licensed family child care.

<sup>12</sup> [Cal. Health & Safety Code § 1597.40\(d\)\(4\)](#).

<sup>13</sup> Cal. Civil Code § 1950.5(c).

<sup>14</sup> [Cal. Health & Safety Code § 1597.531\(a\)](#).

<sup>15</sup> [Cal. Health & Safety Code § 1597.531\(a\)](#).

<sup>16</sup> [Cal. Ins. Code § 676](#).

<sup>17</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 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 non-renewal.

<sup>18</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’s association.

<sup>19</sup> [Cal. Health & Safety Code § 1596.78\(a\) – \(c\)](#)