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

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

Yes. Section 1597.40(d) of California's Health and Safety Code requires tenants to give their landlords this information.[1]

Does a tenant need 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 12 children in a large family child care home. Health and Safety Code Section 1597.40(b) prohibits any restriction on 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 her "plus 2" option under Health and Safety Code Section 1597.44 to care for more children – up to eight in a small family child care home or up to 14 in a large family child care home – the tenant must get the landlord's permission to care for additional children beyond six or 12.

Otherwise, it is *illegal* in California for a landlord to attempt to prohibit a tenant from operating a licensed family child care home for six or 12 children or to try to evict a tenant who does so. Landlords have no legal authority to prohibit family child care.

Is operating a family child care home a "business" use of property?

No. Health and Safety Code Section 1596.78 requires a licensed family child care provider to care for children in his or her own home but does not require the provider to own that home. And, as explained earlier, Section 1597.40(b) prohibits any restrictions or conditions that limit the use of a residence as a family child care home. 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 use.[1]

May a tenant operate a family child care center 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.[2]
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.[3]

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 program, 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 that they are aware the program 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. Having the signed affidavits does not limit the provider's liability.

On the other hand, if a tenant who provides family child care has liability insurance, the landlord may ask to be added to the policy as an additional, named insured. The tenant must comply, providing the landlord makes the request in writing, adding the landlord does not result in cancellation or nonrenewal or the policy, and the landlord pays any additional premium.[4]

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.

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.[5] 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.

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. Such increases constitute "source of income" discrimination in violation of California's Fair Housing and Employment Act.[6] Any rent increases must fall within amounts permitted under state and local rent control laws.

Won't 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 the small number of children in care.[7]

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, and most do not prepare cooked meals for the children. 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 Licensing Board 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 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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[1] Cal. Health & Safety Code § 1597.40.

[2] Statutory language, legislative history and public policy considerations all support reading the Health and Safety Code to protect tenants equally, whether they operate family child care homes in single family houses or multi-unit dwellings. See *Morrison v. Vineyard Creek, L.P. et al.*, 193 Cal.App.4th 1254 (2011); contact the Child Care Law Center for details of the settlement.

[3] Cal. Health & Safety Code § 1597.55a.

[4] Calif. Health & Safety Code § 1597.531(b).

[5] Cal. Health & Safety Code § 1597.40.

[6] Cal. Gov't Code § 12955(p)(1) defines "source of income" as "lawful, verifiable income paid directly to a tenant or paid 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 her care of children.

[7] Cal. Health & Safety Code § 1596.78.
