



CHILD CARE LAW CENTER

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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. About one-third of California children cared for in licensed settings are in family child care homes, making family child care an important source of licensed care.¹

In recognition of family child care’s importance, California has passed several laws that protect the right to provide licensed family child care in rental property. 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 [Section 1597.40 of California’s Health and Safety Code](#). 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.² 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.).³ 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 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 care is provided. Therefore, you are free to decide whether to offer evening or week-end care.

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 abide by [certain conditions](#), but you need your landlord’s written permission to care for more than six.⁸

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.⁶

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.

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 that you are operating, or plan to operate, a family child care home.⁷ Attached is a form prepared by the Department of Social Services that you can 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 [30 days before](#) you start providing child care.⁸ If you *already have a family child care home but you are moving to a new house or apartment*, ask your 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.⁹ Furthermore, each year, you must give your landlord written notice that you are still operating your child care at the time of your annual license fee renewal.¹⁰

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.¹¹ 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](#).¹² 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.”¹³ 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, because of my family child care home, than from other tenants?

Yes. According to the Health and Safety Code ([Section 1597.40\(d\)\(4\)](#)), “upon commencement of, or knowledge of, the operation of a family [child] care home on his or her property” a landlord may charge a family child care provider the maximum security deposit that is legal, even if the landlord charges other tenants less.¹⁴ The maximum security deposit a landlord may charge is two months’ rent for an unfurnished unit or three months’ rent for a furnished unit.¹⁵

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.¹⁶ The Child Care Law Center

highly recommends that you get liability insurance for your family child care, but the law [provides for alternatives](#) and requires you to do so and you may choose not to have insurance.¹⁷ A 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 taking such an action.¹⁹

May my landlord 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 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.²⁰

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

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. 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*, offer to keep the children indoors in the morning and evening. Also, make sure the landlord understands that your license limits the number of children in care.

Children are unlikely to be unsupervised in family child care. Point out that your license requires regular supervision of the small number of children in your care.²¹

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 Licensing Board 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.

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.

continue to pay rent or keep the money in a separate bank account.

If you want to challenge an eviction,

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 June 2014 but the law changes often. If you need legal advice, you should seek help from a competent attorney.

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Useful Resources

Visit 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

Endnotes

¹ See California Child Care Resource & Referral Network, [2013 Child Care Portfolio](http://www.rrnetwork.org) available at www.rrnetwork.org

² [Cal. Health & Safety Code § 1597.40\(b\).](#)

³ 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 settlement.

⁴ [Cal. Health & Safety Code § 1597.40\(b\).](#)

⁵ [Cal. Health & Safety Code § 1597.44.](#)

⁶ [Cal. Health & Safety Code § 1597.465.](#)

⁷ [Cal. Health & Safety Code § 1597.40.](#)

⁸ [Cal. Health & Safety Code § 1597.40\(d\)\(1\).](#)

⁹ [Cal. Health & Safety Code § 1597.40\(d\)\(2\).](#)

¹⁰ [Cal. Health & Safety Code § 1597.40\(d\)\(3\).](#)

¹¹ [Cal. Health & Safety Code § 1597.40\(b\)](#); [Cal. Civil Code § 1942.5\(c\)](#) (eviction or threat of eviction in retaliation for a tenant's lawful and peaceable exercise of any legal right is a violation of law).

¹² [Cal. Civil Code § 1942.5\(c\)](#) (rent increase in retaliation for a tenant’s lawful and peaceable exercise of any legal right is a violation of law).

¹³ [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 licensed family child care.

¹⁴ [Cal. Health & Safety Code § 1597.40\(d\)\(4\)](#).

¹⁵ [Cal. Civil Code § 1950.5\(c\)](#).

¹⁶ [Cal. Health & Safety Code § 1597.40\(b\)](#).

¹⁷ [Cal. Health & Safety Code § 1597.531\(a\)](#).

¹⁹ [Cal. Ins. Code § 676.1\(a\)](#).

²⁰ [Cal. Health & Safety Code § 1597.531\(b\)](#).

²¹ Cal. Health & Safety Code § 1596.78(a)