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Things California Homeowners' Associations Should Know about Family Child Care Homes

A family child care home is a home where a child care provider takes care of children for less than 24-hours per day in her/his own home. Family child care homes are licensed by the State of California. 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

Here are the six things you should know about family child care homes:

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 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

The law also prohibits HOAs from deciding not to sell or rent to an applicant because she/he is a family child care home provider.⁵

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.⁶

The law gives Licensing exclusive responsibility for: inspecting and deciding whether a family child care home meets all the state health and safety state 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 9am to 5pm, or only care for 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 only to 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 has a child care insurance policy, she or he must add the HOA or property owner to her/his child care insurance policy or bond *if* the following conditions are met:

- (1) The HOA or property owner makes a written request to be added to the policy;
- (2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home; and
- (3) Any additional premium assessed for this coverage is paid by the HOA or property owner.⁷

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

While the law does not require family child care providers to have insurance, the Child Care Law Center 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, operation of a family child care home. This kind of coverage can only be covered under a separate insurance policy.⁸

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.⁹

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 November 2017 but the law changes often. If you need legal advice, you should seek help from a competent attorney.

¹ Cal. Health & Safety Code § 1596.78

² Cal. Health & Safety Code §§ 1597.40(a), 1597.43(a). 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 which is conducive to healthy and safe development." The Legislature declared "this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, . . . and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter."

³ Cal. Health & Safety Code § 1597.40(b)-(c).

⁴ *Cit.*; Barrett v. Dawson, 61 Cal. App. 4th 1048, 1051–52, 01 (1998).

⁵ See 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 Fair Employment and Housing Act (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.)

⁶ Cal. Dep't of Soc. Serv., Community Care Licensing Division, <http://www.cclcd.ca.gov/res/pdf/CCFacilityCategoriesFactSheet.pdf> (last visited Oct. 24, 2017).

⁷ Cal. Health & Safety Code § 1597.531.

⁸ Cal. Ins. Code § 676.1(c).

⁹ Cal. Ins. Code § 676.

