



## EARLY CARE & EDUCATION LAW UNIT

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### LANDLORD-TENANT FAMILY CHILD CARE PROVIDER GUIDE

Landlords and tenants may have some concerns regarding the operation of a family child care home in a rental property. This guide provides information on the rights of family child care provider tenants.

#### RENTAL LEASE AGREEMENT

**1. May a landlord include a provision in the rental lease agreement prohibiting a tenant from operating a family child care?**

**NO.** Even if a rental lease agreement states that businesses (including licensed family child care homes) are not allowed in the unit, this does not prohibit a licensed child care provider from operating a family child care on the premises. Any deed restriction, covenant, conditions & restrictions clause, or term in a rental lease agreement that prohibits a tenant from using the property to run a family child care is treated as if it does not exist, and will not be enforced in California.<sup>1</sup> Additionally, any prohibition against “business or professional” uses is void when the business is a family child care. The California Legislature has declared family child care to be a residential use of a home, not a business use.<sup>2</sup> A licensed provider has the legal right to operate a family child care in a residential property; a landlord can neither refuse to rent to nor evict a child care provider solely because they operate a family child care home.<sup>3</sup>

**2. May the operation of a family child care violate the occupancy terms in the rental lease agreement?**

**NO.** A child care provider’s license prohibits the provider from caring for children for twenty-four hours a day.<sup>4</sup> Since any child in a family child care home is in the home for less than twenty-four

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<sup>1</sup> See Cal. Health & Safety Code § 1597.41.

<sup>2</sup> See *id.* §§ 1597.42, 1597.43(a), 1597.45.

<sup>3</sup> See *id.* § 1597.41(b).

<sup>4</sup> See *id.* §§ 1596.750, 1596.78.

hours during any given day, they are not considered occupants of the rental unit. Thus, the occupancy terms are not violated simply because a provider is caring for children.

## NOTIFICATION AND PERMISSION

### 1. Must a tenant who is a family child care provider give their landlord notice regarding the operation of a family child care home in the rental property?

**YES.** California law requires existing and prospective family child care providers to give their landlords a thirty-day written notice prior to beginning operation of the family child care home.<sup>5</sup> A provider who is relocating their existing licensed family child care home to a rental property may provide less than thirty days' written notice when (a) the licensing division approves the operation of the new location in less than thirty days; or (b) the home is licensed in less than thirty days.<sup>6</sup> Providers may use the California Department of Social Services' [Property Owner/Landlord Notification Family Child Care Home](#) form (LIC 9151) to notify their landlords.<sup>7</sup>

### 2. Must a family child care provider tenant ask for their landlord's permission to increase the number of children for whom they provide care?

**SOMETIMES.** Although California law requires that the provider give their landlord written notice, the landlord's permission is not required to operate the family child care home except under two circumstances described below.<sup>8</sup>

There are two types of family child care homes: a "small" family child care home and a "large" family child care home. A small family child care home provides child care for up to eight children.<sup>9</sup> A large family child care home provides child care for up to fourteen children.<sup>10</sup>

Written consent by a landlord is required if (a) a small family child care licensee wants to care for more than six children (seven or eight children); or (b) a large family child care licensee wants to care for more than twelve children (thirteen or fourteen children).<sup>11</sup> Under such circumstances, the increase in capacity would require the landlord's written consent. Providers may use the California Department of Social Services, Community Care Licensing Division's [Property Owner/Landlord Consent Family Child Care Home](#) form (LIC 9149) to notify their landlords.<sup>12</sup>

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<sup>5</sup> See *id.* § 1597.41(d)(1).

<sup>6</sup> See Cal. Health & Safety Code § 1597.43(d)(2).

<sup>7</sup> CAL. DEP'T OF SOC. SERVS., *Property Owner/Landlord Notification Family Child Care Home*, <https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9151.pdf> (last accessed July 12, 2021).

<sup>8</sup> See Cal. Health & Safety Code § 1597.40.

<sup>9</sup> See *id.* § 1597.44.

<sup>10</sup> See *id.* § 1597.465.

<sup>11</sup> See *id.* §§ 1597.44, 1597.465.

<sup>12</sup> CAL. DEP'T SOC. SERVS. COMM. CARE LICENSING DIV., *Property Owner/Landlord Consent Family Child Care Home* (Aug. 1, 2019), <https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9149.PDF>.

A small family child care provider who later obtains a license to become a large family child care provider does not need the landlord's permission to increase capacity to care for twelve children.

## INSURANCE

### 1. Must a family child care provider obtain liability insurance to cover their child care business?

**NO.** California does not require a licensee to obtain liability insurance for their family child care operation. Rather, the provider has the choice of purchasing an insurance policy, obtaining a bond, or having the parents of the children they care for sign affidavits stating that they know the licensee does not have insurance and that the landlord's insurance policy may not cover any accidents that might occur in the family child care home.<sup>13</sup>

Family child care providers should understand that obtaining written affidavits from parents or guardians of children enrolled in their child care home does not protect the providers from being sued by them. The parents' affidavits merely acknowledge that the provider does not carry liability insurance. Although the law does not require licensees to obtain insurance, Public Counsel strongly recommends that providers purchase insurance to protect themselves and their businesses.

Additionally, California prohibits the imposition of any conditions on a licensee's child care business.<sup>14</sup> Requiring a licensed family child care provider to obtain insurance for their operations is an illegal condition and cannot be enforced.

Landlords and tenants should discuss any concerns about liability issues they may have. Landlords should also discuss with their tenants any hidden dangers in the property and in the "common areas," such as entryways and corridors that are under their control as the landlord.

### 2. Does homeowner's insurance cover the family child care business?

**PROBABLY NOT.** It is unlikely that the family child care business will be covered under a homeowner's insurance policy. California state law does not require insurance companies to provide coverage for the family child care activities.<sup>15</sup> Unless a provider has contacted their insurance company and requested a separate rider or endorsement to their insurance policy to cover the family child care business, the operations are probably not covered. Providers should contact their insurance company to learn exactly what their homeowner's insurance policy covers.

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<sup>13</sup> Cal. Health & Safety Code § 1597.531.

<sup>14</sup> See *id.* § 1597.40.

<sup>15</sup> See Cal. Ins. Code § 676.1(c).

## PROHIBITED ACTIONS BY LANDLORDS

### 1. May a landlord raise a tenant's rent because the tenant is operating a licensed family child care home on the premises?

**NO.** It is illegal for a landlord to raise the rent solely because a tenant is operating a family child care home. Such increases constitute "source of income" discrimination and are violations of California's Fair Housing and Employment Act.<sup>16</sup> Such increases may also have a negative disparate impact on women and families, in violation of fair housing laws.<sup>17</sup> Finally, a landlord may not raise a provider's rent in retaliation of the provider's exercise of their legal rights.<sup>18</sup>

### 2. May a landlord impose restrictions on the hours of operation of a family child care business?

**NO.** Only California state laws may regulate a child care provider's hours of operation.<sup>19</sup> Any attempt by a landlord to restrict hours is an illegal, unenforceable condition.

### 3. May a landlord evict a child care provider tenant for operating a family child care home?

**NO.** A landlord may neither threaten to evict nor evict a tenant simply for operating a family child care home. Generally, a landlord must give a tenant written notice before asking the tenant to leave. If the tenant entered into a periodic tenancy (e.g., a month-to-month tenancy with no specified period of duration), the landlord is required to give either: (a) a sixty-day written notice to a tenant who has lived in the rental property for over one year; or (b) a thirty-day written notice.<sup>20</sup> The notice need not state a reason for the eviction. However, if the tenant signed a lease covering a term (e.g., six months, one year, five years), the landlord cannot end the lease until the term expires unless the tenant violates a condition of the lease.

Even if a tenant violates a condition of the lease (e.g., failing to pay rent), a landlord must give the tenant a three-day notice (not including Saturdays and Sundays) to either correct the situation or leave.<sup>21</sup> Please note that various jurisdictions, including the City of LA, L.A. County, and the State of California, have just cause eviction protections which limit a landlord's ability to evict a tenant.<sup>22</sup>

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<sup>16</sup> See Cal. Gov't Code § 12955. "Source of income" is defined as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant." *Id.* § 12955(p)(1). Licensed family child care is a lawful source of income because it is paid directly to the child care provider in exchange for care of children.

<sup>17</sup> *Id.* § 12955.

<sup>18</sup> Cal. Civil Code § 1942.5(d).

<sup>19</sup> See Cal. Health & Safety Code § 1597.40(a).

<sup>20</sup> Cal. Civil Code § 1946.1.

<sup>21</sup> Cal. Code Civil Proc. § 1161.

<sup>22</sup> See L.A. County, Cal. Mun. Code § 8.52.090; Cal. Civil Code § 1946.2.

#### 4. May a landlord require a family child care home provider to pay a higher security deposit?

**YES.** A landlord may have a genuine concern that an increased number of children in the rental property will lead to more wear and tear. A landlord may require an increased security deposit—up to the legal maximum—for a tenant operating a family child care business in the rental property at the beginning of the lease agreement or when they are notified about the family child care business.<sup>23</sup> The increase in security is permissible even if other tenants pay a lesser amount. Security deposits may not exceed: (a) two months' rent for an unfurnished property; or (b) three months' rent for a furnished property.<sup>24</sup>

#### 5. May a landlord inspect a child care provider's leased premises at any time?

**NO.** California limits the hours a landlord may enter a rental unit to normal business hours (generally, weekdays between 8:00 a.m. and 5:00 p.m.), unless the tenant agrees to another time.<sup>25</sup> A landlord must give a tenant at least twenty-four hours' notice before entering the rental property, except in emergencies.<sup>26</sup> A landlord may not use this right of access to harass tenants.<sup>27</sup>

### REMEDIES

Tenants who believe their landlords are acting in violation of the law have a few options.

- Show the landlord this publication and the text of [SB 234](#), the state law providing protections for childcare provider tenants.
- If a tenant believes the landlord's actions constitute housing discrimination, the tenant may file a complaint with the California Department of Fair Employment and Housing (DFEH) online, by mail, or by phone. Additional information on the complaint process can be found on the DFEH website at: <https://www.dfeh.ca.gov/ComplaintProcess/>.
- For most disputes involving \$10,000 or less, tenants and landlords may file an action in small claims court.
- Tenants may also contact Public Counsel's ECE Law Unit for assistance at 213-385-2977 extension 300.

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<sup>23</sup> Cal. Health & Safety Code § 1597.41(d)(4)

<sup>24</sup> Cal. Civil Code § 1950.5(c)(1).

<sup>25</sup> *See id.* § 1954(b).

<sup>26</sup> *See id.* § 1954.

<sup>27</sup> *Id.* §1954(c).

## ADDITIONAL RESOURCES

For further information, please refer to:

- California Health and Safety Code, California Civil Code, and Title 22 of the California Code of Regulations sections related to child care.
- CAL. DEP'T REAL ESTATE, *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* (Sept. 2020), <https://landlordtenant.dre.ca.gov/pdf/resources/CaliforniaTenantRenterGuide.pdf>.
- *Barrett v. Dawson*, 61 Cal. App. 4th 1048 (1998).
- PUBLIC COUNSEL EARLY CHILD CARE & EDU. LAW UNIT, *Child Care Liability Insurance* (July 2013), <http://www.publiccounsel.org/tools/assets/files/0366.pdf>.

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