



EARLY CARE & EDUCATION LAW UNIT

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NEIGHBOR DISPUTES AND YOUR FAMILY CHILD CARE HOME BUSINESS

Neighbor disputes arise for various reasons, some of which may relate to your child care business. As a family child care provider, who provides care from your home, you have several options for addressing these disputes or harassment directed at you, your family, your assistants, the families in your care, the actions interfering with the use of your home as a business, the filing of complaints against you to Community Care Licensing (“Licensing”), and other similar acts. This handout discusses options available to you when facing such situations.

Helpful Tip #1

You should notify Licensing about the situation using an Unusual Incident/Injury Report ([Form LIC 624B](#))¹, regardless of the steps you take with your neighbor. This allows you to be proactive in case the neighbor attempts to report you to Licensing as part of the harassment. It also ensures that Licensing is aware of the situation and helps to create a written record.

Helpful Tip #2

It is also important to maintain a written log throughout the dispute. This log should include descriptions of the dispute and the steps you have taken to solve the problem. At the end of this document is a sample log that you can use to keep track of the dispute. It is important to write down both your neighbor’s behavior and the efforts you have taken to resolve the situation.

1. Discuss the Issue with Your Neighbor

It is always best to address the issue directly with your neighbor before it escalates further, as you will have to continue living near your neighbor. As a result, you will want to keep the relationship and any interaction towards resolving the problem as civil as possible.

Take time to start writing down the harassing events before you speak with the neighbor. This will help you have a clear understanding of the facts and to think about what you will say. A written record may also be useful later if your efforts to resolve the problem do not work out.

¹ <https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC624B.PDF>

During your conversation with your neighbor, assume the neighbor is unaware of the effects of their actions and present your point of view by offering specific examples of the neighbor's actions that make you feel uncomfortable, harassed, or threatened. Inform your neighbor that you are a licensed family child care provider and you have a right to offer family child care in your home under California law.² To help explain what family child care is, your status as a licensed provider, and/or your right to provide family child care in your home, you can contact Public Counsel or Child Care Law Center.³

If your neighbor is not already aware that you are licensed and have the right to offer family child care from your home, knowing this may change their attitude towards the situation. Listen to your neighbor carefully and if you cannot respond, ask the neighbor for time to think about the issue.

2. Write a Letter to Your Neighbor

Writing a letter to your neighbor is useful if your direct attempts to solve the problem have not worked. A letter also shows your neighbor that you are serious about resolving the issue. This alone may bring about a resolution. It can also serve as part of your written record if you sue in small claims court. Your letter should include facts that outline your neighbor's actions, how it affects you and the children in your program, and reasonable compromises you are willing to accept in order for you both to enjoy your neighborhood in peace. You should also state that you are prepared to take additional steps to stop the unwanted and/or harassing behavior, including the steps described further in this handout. You should send your letter through certified mail so that you have evidence of when the letter was received. A sample letter can be found at the end of this document.

3. Request Mediation

What is mediation?

Mediation is a process where individuals on different sides of a dispute work with an impartial third party with the goal of finding a middle ground to resolve the dispute. The third party, known as the mediator, may communicate with both parties separately or together, depending upon the situation. Each party will have an opportunity to tell their side of the story, and the mediator will

² Under the California Child Day Care Facilities Act (California Health & Safety Code sections 1596.70 et seq.) and the Keeping Kids Close to Home Act, Senate Bill 234 (Skinner, 2019), licensed family child care providers have the right to provide family child care in their home, no matter if they rent or own their home.

³ If you are a California renter, you can use the following resources to learn more about your rights: "Landlord Tenant Family Childcare Provider Guide," available at: <https://publiccounsel.org/publications/landlord-tenant-family-childcare-provider-guide-july-2021/>; "Know the Law About Family Child Care Homes in California Rental Property," available at: <https://www.childcarelaw.org/content/know-the-law-about-family-child-care-homes-in-california-rental-properties/>.

assist the parties in understanding each point of view. If the parties reach an agreement, the third party may even help the parties make a contract that is legally enforceable in court.

When is mediation useful?

Mediation is useful when the dispute cannot be solved by the two parties alone. Since mediation involves bringing other people into the dispute, it is a good tool to use after direct communication with your neighbor has been unsuccessful because it allows for the mediator to help with indirect communication. Mediation is cheaper and quicker than going to court. Some organizations offer free mediation programs. More information can be found in the Mediation vs. Litigation handout on the Public Counsel website.⁴

4. Call the Police

Sometimes speaking to, writing to, or offering mediation to your neighbor will not stop the harassing activity. In certain situations, depending on your judgment, calling the police will be required. This is especially the case when there is hostility or potential for danger. It is important to know that this is a serious step and should only be used when necessary.

When the police come, you should carefully explain why you called. You may even show them the log you have kept, including a copy of the letter you sent the neighbor. This will show the police both what the issue is about and let them know you are organized and serious about the issue. The police may be able to act as your witness if your dispute ends up in court. You should ask them whether they would agree to this or submit a statement on your behalf.

5. Apply for a Restraining Order

What is a restraining order?

A restraining order (also called a “protective order”) is a court order that can protect someone from physical and verbal misconduct, including being threatened or harassed. Getting a restraining order from a court against your neighbor could prevent your neighbor from continuing to threaten or harass you. It can be enforced by calling the police, and any violation of the order could result in a jail sentence for your neighbor.

When is a restraining order useful?

A restraining order is a good tool if the harassment is severe or you feel you, your family, or the families you care for are at risk of being harmed. This includes instances where you feel that you need protection from the harassment as soon as possible.

⁴ <https://publiccounsel.org/publications/mediation-vs-litigation-things-for-child-care-providers-to-consider-before-going-to-court-2016/>

What do I need to prove to receive a restraining order?

You will need to show that there has either been violence, credible threats of violence, or a pattern of harassment directed at you, your family, and/or the families in your care.

A pattern of harassment is defined as multiple acts over a period of time showing intent to harass. Acts can include threatening phone calls, letters, following or stalking, and other unwanted contact. You must also show that a reasonable person would suffer emotional distress because of the harassment and that you indeed did experience emotional distress.⁵

Because you will need to show the effect of the harassment on you, it is important that you document how each instance of harassment makes you feel in your log of events. Your log must be specific, including the date and time of each event and the effect the harassment has had on you.

How do I get a restraining order?

California has several types of restraining orders.⁶ The one you will need to prevent neighbor harassment is called a Civil Harassment Restraining Order. You can ask for this type of restraining order if you are being harassed, stalked, abused, or threatened by someone like a neighbor. To get a restraining order, you must obtain the required forms from the court. The process may require a number of forms and may be different depending on which courthouse you go to. When you have the proper paperwork ready, it should be filed with the court clerk, along with any supporting documents you have. Once you file, you will likely have an initial hearing with a judge that same day. The court will require you to let your neighbor know that you are filing the restraining order request at least 24 hours in advance.

At the initial hearing, the court may issue a Temporary Restraining Order (TRO) if the judge is convinced that you need immediate protection. The court will hold a full hearing within three weeks of the initial hearing. Based on the full hearing, the court will determine whether you can receive a permanent restraining order. A judge will determine if there has been harassment and whether it has negatively affected you. A judge may only issue a permanent restraining order for up to three years. If the harassment continues after the restraining order expires, you must go through the same process to receive another one.

⁵ California Code of Civil Procedure § 527.6. This law can be found here: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=527.6.

⁶ There are four types of restraining orders available to people in California: (a) domestic violence restraining order, (b) elder or dependent adult abuse restraining order, (c) civil harassment restraining order, and (d) workplace violence restraining order.

What are the disadvantages of applying for a restraining order?

Applying for a restraining order can be costly. If you are asking for a civil harassment restraining order, you do not have to pay a fee if you are asking for a restraining order against a person who:

- Was violent,
- Threatened you,
- Stalked you, and/or
- Acted in a way that scared you.⁷

Please note, in other cases, you may have to pay a fee unless you qualify for a “fee waiver.” Before applying for a restraining order, speak to the court clerk about the costs and whether you would be eligible for a fee waiver.⁸ In addition, you may need to pay someone (including a Sheriff) to notify the neighbor that you have filed for a restraining order. To learn more about the costs and fee waivers associated with restraining orders, you can visit these resources provided by the Judicial Branch of California:

- Superior Court of California, Statewide Fee Schedule (As of 01/01/2022), <https://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-01012022.pdf>
- Ask for a Fee Waiver if you can't afford filing fees, <https://selfhelp.courts.ca.gov/fee-waiver>

Applying for a restraining order may also take several hours. The forms are complex and gathering the required information can take some time. You will also need to go to the courthouse both to file the forms and for the hearings. This is time you will need to spend away from your business.

For more information on restraining order requests in California courts, you can visit these resources provided by the Judicial Branch of California:

- Restraining Orders, <https://www.courts.ca.gov/1260.htm?rdeLocaleAttr=en>
- Civil Harassment, <https://www.courts.ca.gov/1044.htm>
- Getting Help, <https://www.courts.ca.gov/1261.htm>
- Frequently Asked Questions, <https://www.courts.ca.gov/1046.htm>

6. File a Small Claims Court Matter

What is small claims court?

Small claims court is a special court where disputes can be resolved quickly and less expensively. There are no juries, no lawyers, and less complicated rules. The “plaintiff” is the person filing a small claims case against the person who harmed them in some way, known as the “defendant.” After the plaintiff files their claim in small claims court, they may have a court

⁷ The Judicial Branch of California, Frequently Asked Questions, <https://www.courts.ca.gov/1046.htm>

⁸ Please note, informational resources from the court may be updated each year. Speaking with the court clerk can direct you to the most accurate and current information on restraining orders and fees.

date in about 1 to 2 months. A small claims court date involves a short (usually 15-20 minutes) hearing with a judge. Both the plaintiff and the defendant must be present at the hearing. The plaintiff may only sue for up to \$10,000. A judge will hear both sides of the case and issue a ruling. Note that unlike with a restraining order, small claims court allows for the recovery of money damages.

The downsides of small claims court are the amount of time it will take to organize your case and the time it will take to fill out the forms, which may be complex.⁹ There are also fees for going to small claims court, which are between \$30 - \$100, depending on the specifics of your case. Like applying for a restraining order, if you cannot afford the small claims filing fee, you can also ask the court for a fee waiver.¹⁰ Unlike with the civil restraining order process, it may take several months to see a small claims court judge. Small claims court judges have the ability to award money damages and issue an order requiring the neighbor to stop the harassment.

When should I pursue a neighbor dispute in small claims court?

Going to small claims court under a private nuisance claim is an alternative to obtaining a restraining order. It is particularly useful when the harassment interferes with your use and enjoyment of your property. You may also claim a neighbor is intentionally inflicting emotional distress if you can show that there has been extreme personal suffering caused by the neighbor on purpose. You may also be entitled to money damages in small claims court, although the amount will likely be very little unless there is clear economic harm such as damage to property and lost income.

Small claims court may be the best option if you have been financially harmed because of the harassment.

What do I need to show in small claims court?

There are two possible small court claims you may have when a neighbor harasses you: (1) nuisance and/or (2) intentional infliction of emotional distress. To win in small claims court for nuisance you must prove your neighbor obstructed your free use of your property. An example would be a neighbor who makes noise that prevents you from sleeping or being outside on your property. The interference must also be unreasonable. This means it is okay for a neighbor to do something considered normal such as bouncing a basketball outside. However, it may be considered unreasonable behavior to bounce the basketball on your garage door and yell obscenities at you. In short, you are more likely to have success if you show that the activity was directed at you as a form of harassment.

⁹ More information on the forms required when filing a small claims case can be found here:

<https://selfhelp.courts.ca.gov/small-claims/start-case/forms/fill-out-forms>

¹⁰ <https://selfhelp.courts.ca.gov/fee-waiver>

A successful intentional infliction of emotional distress claim will show that the neighbor purposefully caused extreme personal suffering to you.

Keep in mind that it is difficult to place a dollar amount on emotional damages as opposed to economic damages. If you have suffered only emotional distress, you will need to carefully describe how exactly you have been impacted. When keeping your log it is important that you mention how the neighbor's actions have affected you personally so that you can show there are damages.

Proving the neighbor's harassing behavior should not be difficult if you have kept a detailed log and there are witnesses who can verify the harassment (for example, via letter or in person at the court hearing). Even police officers can be your witnesses. This log should include both how you feel, and how you have limited your activities on your own property. An example would be not using your yard as much as you used to in order to avoid your neighbor.

For a more thorough explanation of the small claims process, please see the "What You Need to Know About Small Claims Court" handout on Public Counsel's website.¹¹

Additional information on the small claims process can be found here:

- California Courts Self-Help Guide, "Small Claims Index," <https://selfhelp.courts.ca.gov/small-claims-index>
- California Courts Self-Help Guide, "Check you have a case for small claims," <https://selfhelp.courts.ca.gov/small-claims/before-you-start>
- California Courts Self-Help Guide, "Start a small claims case," <https://selfhelp.courts.ca.gov/small-claims/start-case/forms/fill-out-forms>
- The Judicial Branch of California, "Cases for \$10,000 or Less," <https://www.courts.ca.gov/1062.htm?rdeLocaleAttr=en>

Summary

Each instance of neighbor harassment is unique. While the steps detailed above are a good starting point, this handout is meant for informational purposes only and may not be all the information you need for your situation. If you are in a dispute with a neighbor, it is important that you contact an attorney to review your options. There are a number of ways you can approach a dispute, each with its unique advantages and disadvantages. It is important to consider this as you decide which legal tool to pursue for your situation.

This document was revised by Public Counsel's Early Care & Education Law Unit in November 2022 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or

¹¹ <https://publiccounsel.org/publications/what-you-need-to-know-about-small-claims-court/>

comments, please call the ECE Law Unit intake line at 213/ 385 2977 ext. 300 or visit our website at <https://publiccounsel.org/services/child-care-day-care/>.

Sample Letter to Neighbor

[Your Name]
[Your Address]
[Your City, State, Zip Code]

[Date]

[Neighbor's Name]
[Neighbor's Address]
[Neighbor's City, State, Zip Code]

Dear Neighbor,

I am writing to address your recent actions towards me and my business. As you know, I operate a licensed family child care home business with children under my care. Your actions towards me, including [list description of the harassing activity] are harmful both to me and my business. I have previously addressed this issue with you in person, and yet your harassment has continued.

I am requesting that you cease your harassing activity directed at me and my child care business. If you do not, I will have to use the legal means at my disposal to resolve the matter. My hope is that this letter will allow us to resolve the issue so that we can both enjoy our neighborhood in peace. Please contact me if you have any questions or would like to discuss this matter further.

Sincerely,

[Your Name]

Sample Neighbor Harassment Log

Date & Time	Description of Harassment	Notes
<i>Monday, October 31st at around noon</i>	<i>Neighbor approached me in front of my home while I had the children outside. He began yelling obscenities at me in front of the children. I kindly asked him to stop.</i>	<i>When I spoke with him he could not provide a reason why he was bothering me and the children. I explained that I am operating a licensed child care family home. I felt very threatened by him. I am scared to use my yard.</i>