



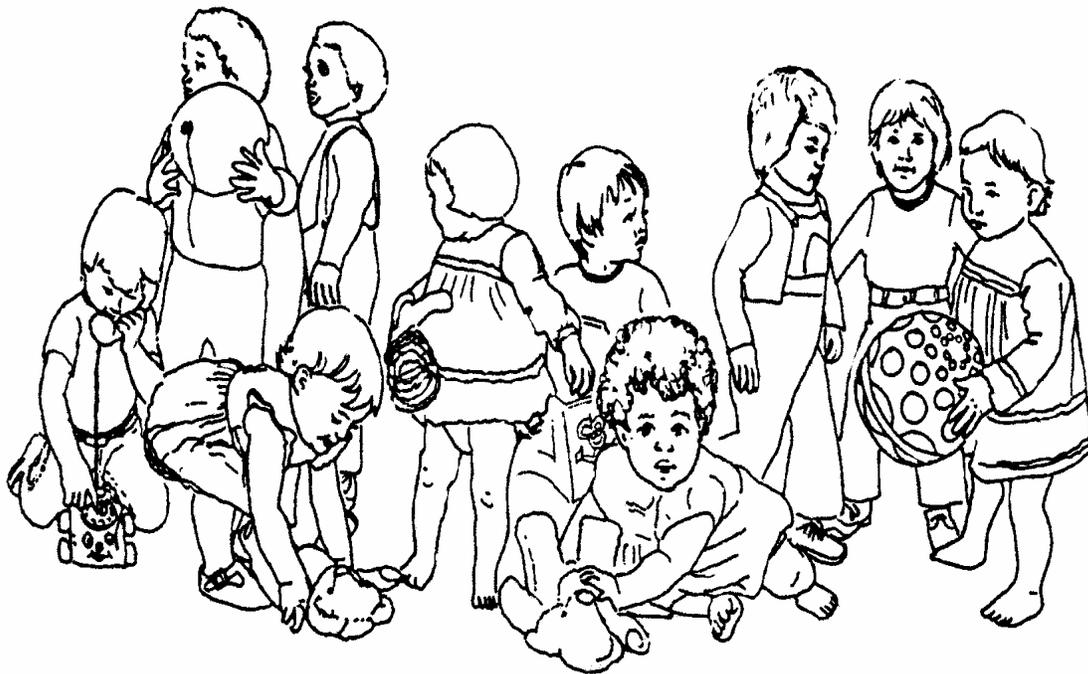
California Department of
Social Services



Child Care Advocate Program

FAMILY CHILD CARE Self-Assessment Guide

TENANT RIGHTS



COMMUNITY CARE LICENSING DIVISION
"Promoting Healthy, Safe and
Supportive Community Care"

Family Child Care Tenant Rights Self-Assessment Guide

For many family child care providers the most difficult part of setting up a child care home comes from dealing with a landlord, property manager, or homeowners association.

Landlords, property managers and homeowner associations are concerned about their liability, and wear and tear on the home. Often, they confuse family child care with child care centers and envision lots of people coming and going all day long disturbing other tenants. These concerns are rarely warranted and can not be used as reasons to stop you from providing child care in your rental home. In California, landlords, property owners or homeowner associations can not refuse a tenant the right to operate a family child care home nor can this be a reason for family child care providers who are tenants to be evicted.

This guide includes information about your housing rights as a family child care provider if you live in rented or leased property. It also contains resources you can use if you are having problems with your landlord, property owner or homeowners association and sample language you can use to write a letter to your landlord.

Health and Safety Code Sections Related to Housing

California law requires that family child care be provided in the caregiver's own home. There is no requirement that the provider own their own home. If you rent or lease your home or apartment and your rental agreement or lease says the apartment or home is to be used only as a residence, family child care is still allowed. The following are selected sections of the Health and Safety Code you may find useful if you are having problems with your landlord.

- Legislative Findings and Declarations (Health and Safety Code Section 1597.30 states in part)

The Legislature finds and declares in part:

- (a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.
- (b) That there are insufficient numbers of regulated family child care homes in California.
- (c) There will be a growing need for child day care facilities due to the increase in working parents.
- (d) Many parents prefer child care located in their neighborhoods in family homes

- (e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.
- Public Policy to Provide Home Environment; Restrictions Governing Real Property (Health and Safety Code Section 1597.40 states in part)
 - (a) It is the intent of the Legislature 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. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting. The Legislature declares 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, except as specifically provided for in this chapter, 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.
 - (b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy, or upon transfer of title to real property as a family day care home for children is void.
 - (c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits the acquisition, use, or occupancy of such property for a family day care home for children is void.
 - (d) (1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

- Family Day Care Home (Health and Safety Code Section 1596.78 states in part)

“Family day care home” means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

- Small Family Day Care Homes; Number of Children; Property Owner Consent (Health and Safety Code Section 1597.44)

A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than two infants are cared for during any time when more than six children are cared for.
- (c) The licensee notifies each parent that the facility is caring for two additional school-age children and that there may be up to seven or eight children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

- Large Family Day Care Homes; Number of Children; Property Owner Consent (Health and Safety Code Section 1597.465)

A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.

- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
 - (c) The licensee notifies a parent that the facility is caring for two additional school-age children and that there may be up to 13 or 14 children in the home at one time.
 - (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.
- Liability Insurance or Bond; Affidavits; Additional Insured Parties (Health and Safety Code Section 1597.531)
- (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association, would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.
 - (b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:
 - (1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

- (2) The addition of the property or governing body of the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.
- (3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.
- (c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section 1351 of the Civil Code.

What Do These Laws Mean?

Use Of Property

If you provide family child care, this is not a "business" use of the property. If your rental agreement or lease says that you can only use your home as a residence, that statement can not be used to stop you from doing family child care. Also, If your property owner uses a statement in your lease or rental agreement that says you cannot use the home as a place of business, that statement cannot be used to stop you from doing family child care.

Even though the Health and Safety Code refers to "single-family residences," the law has historically been interpreted to protect providers in multiple dwellings such as apartments, condominiums and other non-detached residences . This means that any legal residence can qualify to become a family child care home if it meets the licensing requirements.

Federal law also allows family child care in HUD supported housing, or under Section 8 requirements. Federally subsidized housing requires the tenant to use the home as a private dwelling. Family child care as a profit-making activity is a permitted use of the home because the child care is incidental to the primary use as a residence.

NOTICE TO LANDLORDS

As of January 1, 1997 prospective family child care providers who live in rented or leased properties must give the landlord or property owner 30 days written notice of the intent to begin operating licensed family child care on the premises. The license application to operate a family child care home includes a notice form (LIC 9151) for you to provide the landlord notification. This form also notifies landlords that it does not give them the right to discriminate against you or to place any restrictions upon you because you are doing family child care.

The notice also does not mean that the landlord needs to agree or give permission for you to provide family child care for either six or 12 children. It

only means that the landlord or property owner has been notified you are or will be providing child care in your rented or leased home.

INCREASE IN CAPACITY LANDLORD NOTICE

As a family child care provider, you may increase your maximum capacity by two school-age children. Small family child care providers, currently licensed for six children, have the option to increase their capacity to eight children, as long as two of the children are at least six years old. No more than two infants may be cared for when more than six children are present.

Large family child care providers, currently licensed for 12 children, have the option to increase their capacity to 14 children, as long as two of the children are at least six years old. No more than three infants may be cared for when more than 12 children are present.

If you are a small or large family child care provider and live in rented or leased property, including space for a mobile home, before you can increase your licensed capacity you must do two things: (1) Request an increase in capacity from your licensing office, and (2) Get “**consent**” from your landlord or property owner. This “**consent**” is only required when you want to increase your capacity. If you do not provide care for two additional school-age children, for a licensed capacity of either eight or 14 children, property owner “**consent**” is not required. A landlord has the right to refuse permission for you to increase your capacity, but does not have the right to refuse permission for you to care for six or 12 children. The “Property Owner/Landlord Consent Form (LIC 9149) will be given to you by your local licensing office when you request a capacity increase.

SECURITY DEPOSIT

Landlords do have the right to require an additional security deposit if you are providing family child care in the rental home. However, the total security deposit cannot exceed the maximum allowable under existing law, which is currently two months rent. This is the only “restriction” a landlord can apply to you as a family child care provider that is not required of other tenants. In all other respects, you can not be treated differently or have additional requirements placed on you because you are a family child care provider that are not applied to all other tenants.

COVENANTS AND DEEDS

Homeowners or tenants who live within associations that have covenants and agreements are also not restricted from providing family child care, even though the covenant may prohibit a business, commercial or professional use of the property. Usually, restrictions on the use of the property will appear in the deed of purchase of a home or in the bylaws of condominiums or townhouses. The

restrictions generally say that the homeowner or tenant is limited to the use of their property to “residential purposes only” or they cannot use their home as a business. These covenants do not apply to providing family child care.

INSURANCE

The law requires you to do one of three things: (1) maintain liability insurance coverage, or (2) post a bond, or (3) in lieu of the insurance or bond, keep a file of parent affidavits informing the parent that you do not have liability coverage. You do not have to have liability insurance. You are only required to choose one of the three options.

If you purchase liability insurance, and live in a rental unit or in a home covered by an association or covenant agreement, you can name the landlord or association as an additional insured on the policy. If you do this, the following conditions apply: The property owner or association must make a written request to be added as an insured party; adding the property owner or association does not cause the cancellation or nonrenewal of your policy; and any additional premium is paid for by the property owner or association.

State law protects homeowners who become family child care providers from the cancellation of their homeowners general insurance policy. Some large insurance companies will attempt to cancel or not renew the home policies of a landlord who leases his property to family child care providers. If this happens, contact your Child Care Advocate who will be able to help you and provide you with other resources.

COMMON CONCERNS

Landlords and the public think that a family child care home is the same as a child care center. They worry that large numbers of children, cars and parents will be in the neighborhood. Providing information about the differences between centers and homes, as well as licensing limits on the numbers of children is helpful.

Liability protection is usually the major concern of landlords. If you can purchase liability insurance and include the landlord as an additional insured, it may ease the fears of your landlord. Family child care providers who comply with licensing regulations are less likely to be held liable when an injury occurs. It is important for you to reassure your landlord that you will comply with licensing regulations. It may even help if you give your landlord a copy of the regulations and obtain your landlord’s help in making prompt repairs to the property to reduce the risk of liability.

Family child care homes must be kept “clean and orderly” under licensing regulations. Parents choose a child care home partly due to its appearance. You

have an investment in keeping your family child care home attractive and clean in order to stay “in business.” Landlords concerned about additional wear and tear on the home should be aware of this. The additional security deposit may be used to cover wear beyond what is considered normal.

Sometimes landlords are worried about additional utility costs for child care. Explaining to the landlord that you usually do not wash children’s clothes or bathe the children, may help the landlord understand. You may want to come to some agreement with your landlord to help pay for any additional utility usage, even though there is no legal obligation to do this.

Landlords can not place restrictions on you that are different from those applied to other tenants. They can not limit the hours you care for children, nor can they say you can not do evening or weekend care. You set your own hours. This allows you to provide for the needs of the parents of the children you care for.

You also need to be aware of the impact of child care on your neighbors and attempt to develop policies to address these concerns. For example, you can tell the parents of the children in your care where to park their car, cautioning them about respecting other tenants parking spaces, or encourage parents to speak softly in hallways. Good neighbor policies are important and will go a long way toward making your child care operation more favorable with the neighbors.

You should share information with your neighbors and landlords. Often issues and concerns arise from simple misunderstandings. Keeping the lines of communication open is helpful. Explain licensing rules to your landlord and neighbors. Let them know there is an oversight agency, rules about numbers of children, and if they have a complaint, they can call the licensing agency. Once your neighbors and landlord see that children are supervised and cared for, they begin to see child care as an asset to the neighborhood.

SAMPLE LETTER TO LANDLORD

You may find that writing a letter to your landlord outlining your right to operate a family child care home in rental property will help in their understanding of what your rights are. The following is sample language you may want to use in a letter to your landlord. You may use all of the information or the parts that pertain to your particular situation.

Dear _____:

This letter is to provide you with information about the protections in law that give me the right to operate a licensed family child care home in my rental property.

By definition, family child care must take place in the provider's home. The law, Health and Safety Code Section 1596.78 states in part: "Family day care home' means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away..."

Family child care homes are not child care centers which are run in facilities other than the provider's home and usually have large numbers of children. I am licensed to care for (insert your licensed capacity here) children. I can not care for any more children than my license allows.

The law also says that a landlord can not place restrictions on a tenant who does family child care. That law is Health and Safety Code Section 1597.40 and it says in part:

(b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.

(c)...every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

This means that a lease or rental agreement that prevents the use of the home for any commercial purpose can not be used to prohibit licensed family child care. It also means that I am not in violation of my (insert the appropriate term, lease or rental agreement) by operating a licensed family child care home.

The law only requires me to notify you in writing that I am providing family child care. The law does not allow you to discriminate or retaliate against me for operating a family child care home. The law also does not require me to get your permission to operate a licensed (insert the appropriate term, small family child care home for six or fewer children or large family child care home serving 12 or fewer children.)

The law requires me to get your consent if I care for two additional school-age children, which would make my licensed capacity either eight or 14 children. If you do not grant me consent to care for these two additional school-age children, I can still operate a licensed family child care home. I just can not care for more than (insert the proper number, six or 12 children.)

You may also be concerned about your liability in case a child is injured in my family child care home. The law, Health and Safety Code Section 1597.531, gives me three options to address this concern: (1) I can purchase a liability policy; (2) I can purchase a bond; or, (3) I can have all the parents of the children in my care sign an affidavit provided by the Department of Social Services acknowledging that I do not have liability insurance. Purchasing liability insurance is up to me. You can not require me to do so. If you want to be included as an additional insured party on any liability policy I may obtain, you can do that only if you do so in writing to me. The law says that adding you as an additional insured party is only allowed if the addition does not result in a cancellation or non-renewal of the policy and if there is any additional premium that you pay the extra cost.

You may also be concerned about “wear and tear” on the home because I am a family child care provider. Please be assured that I keep my home neat and clean at all times. My livelihood depends on having a home that is attractive to parents who leave their children in my care. Also, the licensing agency makes unannounced visits and I am required by licensing regulations to keep my home “clean and orderly” at all times.

I hope I have helped to clear up any misunderstandings you may have about family child care. I am more than happy to meet with you or provide you with a copy of the licensing regulations I am required to follow if you have any questions.

Sincerely,

RESOURCES and MORE INFORMATION

Contact your Child Care Advocate for further assistance on landlord and tenant issues. The Child Care Advocate has access to extensive information about landlord and tenant issues and can also provide mediation services between you and your landlord. You can also contact the Child Care Law Center in San Francisco at (415) 495-5498, or the Public Counsel law office in Los Angeles at (213) 385-2977.