



Family Child Care Providers: Know Your Rights as Tenants

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INTRODUCTION

In 1986, Public Counsel created the Child Care Law Project (CCLP) to increase the supply of child care facilities in the County of Los Angeles and to assist existing facilities with legal issues confronting them. Since that time, CCLP has provided free legal assistance to thousands of licensed child care providers and nonprofit child care centers on a host of issues including licensing, insurance and landlord/tenant matters. Many more have benefitted from CCLP's research, publications, presentations and advocacy on child care related matters.

In caring for children, you provide a critical service to your community and with the increasing number of parents entering the workforce, the need for quality affordable child care is in greater demand. If you operate a licensed family child care home in an apartment or rented house, you have some important legal rights with respect to your landlord. This pamphlet discusses some of the important California State laws that exist to protect you against adverse actions by your landlord. In addition, this pamphlet includes a special section on general landlord/tenant issues which may affect your family child care operations.

Public Counsel's Child Care Law Project developed this pamphlet to help the many licensed child care providers who operate licensed family child care homes in rented or leased facilities.

LEGAL RIGHTS OF CHILD CARE PROVIDERS AS TENANTS

Why are landlords so hostile toward family child care operations?

As a rule, landlords oppose family child care for a number of reasons. Most importantly, they fear liability. They are afraid that if a child is hurt or abused in the child care program, they might be sued by the parents. They may be right; many lawyers representing a parent in these circumstances would sue everyone who is even conceivably responsible, and that would include the landlord.

Without an insurance policy that covers the child care operations and that specifically includes the landlord as an insured party, landlords do face increased risk of liability and at the very least they face the risk of having to defend a lawsuit to prove they were not at fault. Landlords are also concerned about increased wear and tear on the premises and having to field complaints from neighboring tenants and/or homeowners.

Fortunately, California State law provides certain protections for licensed family child care providers who rent their facilities. Landlords may not restrict or prohibit the operation of family child care businesses on their premises.¹ Therefore the reasons stated above cannot be used by a landlord as a justification for prohibiting

¹ California Health & Safety Code § 1597.40. (See Appendix A).

you from operating or restricting your family child care home. (See Eviction section below.)

Rental/Lease Agreements

Are there advantages to signing a 12-month lease over a month-to-month lease?

YES. Most tenants sign leases that are on a month-to-month basis. This arrangement allows the landlord to terminate the lease with 30 days notice, regardless of how long you have lived on the property. In a longer term lease, such as a 12 month lease, the landlord cannot ask the tenant to leave until the term of the lease ends. This arrangement provides your program with greater stability.

NOTE: If you violate one of the lease terms, the landlord can serve you with a three day notice to remedy the situation or leave.

Am I in violation of my rental agreement if I operate a child care business on the premises?

NO. Even if your lease states that businesses, including licensed family child care programs, are not allowed, this does not prohibit you from operating your family child care business on the premises. Under California State law, this section of the lease is treated as if it does not exist. Therefore it cannot be enforced against you solely because you are operating a licensed family child care home on leased or rented property.

Does the operation of a family child care business violate the occupancy terms in my lease agreement?

NO. The children enrolled in your child care program are not considered occupants of your rental unit because they do not live with you. Your license prohibits you from caring for children for 24 hours a day. Therefore, you are not in violation of the occupancy clause in your lease agreement by operating a licensed family child care home.

Notification

Should I inform my landlord of my intention to operate a family child care home?

YES. California law requires existing and prospective family child care providers, who rent or lease their homes, to give landlords written notice of their existing or intended family child care businesses. The notice² requirements differ based on each provider's particular situation:

- a. Tenants who plan to open a family child care must give their landlords a **WRITTEN NOTICE 30 DAYS** prior to opening their family child care home. Although you are required to give 30 days written notice prior to operating your family child care home, the law does not require you to give your landlord written notice before the lease is signed.

NOTE: You may not want to inform your landlord of your intention to operate a family child care until you have received your State license. Many of the State laws that protect child care providers only apply to licensed providers. Therefore, if you disclose your intentions before you are actually licensed, you may find yourself with fewer protections in an eviction action.

² California Health & Safety Code § 1597.40. (See Appendix A).

- b. Tenants who are relocating an existing family child care business to another rental property must give their landlords 30 days **written notice**. However, written notice can be given **in less than 30 days** if the license to operate at the new facility is approved by the State licensing agency (Community Care Licensing) in less than 30 days.
- c. Tenants who are currently operating a family child care home in a rented facility should have already notified their landlords. If you fall into this category, make sure you have a copy of the notification submitted to the landlord in your files.

NOTE: Failure to provide your landlord with the requisite written notice is a violation of State law. It may jeopardize your state license as well as your rental agreement. Make sure you keep a copy of the written notice in your files for reference and proof. See Sample Notices, Appendix C, p. xii.

Although you are required under State law to give written notice, you do not need your landlord's permission to operate your family child care. As stated previously, landlords are powerless under State law to prohibit or restrict your family child care operations. The notification requirement does not give landlords permission to discriminate against family child care providers.

Permission

Should I ask my landlord for permission before starting a family child care business?

NO. Do not confuse permission with your requirement to provide written notice. As stated above, landlords are powerless under

State law to prohibit or restrict your child care operations, and asking their permission simply leads to confusion: it implies they have veto power when in fact they do not.

Do I need my landlord's permission to increase my capacity?

The answer to this question **DEPENDS** on whether you are:

1) increasing your capacity from a small to a large family child care, or 2) if you are increasing your capacity from 6 to 8 children or from 12 to 14 children.

- 1) You do **NOT** need your landlord's permission to increase your capacity from a small to a large family child care program. The landlord does not have the authority to prohibit you from operating a large family day care operation out of your rental facility.

NOTE: In most cities, you are required to apply for a permit to operate a large family child care in a residential neighborhood. Request a copy of your city's large family child care ordinance from your local City Planning Department. Contact Public Counsel for advice and request a copy of our pamphlet on Child Care and Zoning.

- 2) You **DO** need your landlord's permission to increase your capacity from 6 to 8 children or from 12 to 14 children. This increase in capacity requires your landlord's written consent. Tenants who are licensed as small family child care providers may care for more than 6 and up to 8 children under certain conditions, including obtaining written consent from the property owner.³ The same applies to tenants who are licensed as large family child care

³ California Health & Safety Code § 1597.44. (See Appendix A, p. ii).

providers and choose to care for more than 12 and up to 14 children.⁴

NOTE: The landlord cannot prohibit you from operating a licensed family child care home, he/she can only deny you permission to increase your existing capacity from 6 to 8 or from 12 to 14.

Rent Increases

Can my landlord raise my rent because I am operating a licensed family child care home on the premises?

The answer **DEPENDS** on the amount of the increase and the landlord's motivation for imposing it.

Sometimes landlords raise the rent solely because they do not like the fact that a tenant is operating a family child care home. Usually, under these circumstances, the increase will be substantial (e.g., double) because the motivation is to force the tenant to leave. In this case, the landlord is in effect saying that you may only continue doing family child care if you agree to pay the higher rent. This is an unlawful condition on your family child care operations and cannot be enforced.

In addition, it is unlawful for a landlord to raise a tenant's rent in retaliation for the tenant's exercising her legal rights.⁵ Your State license gives you the right to operate a family child care home at

⁴ California Health & Safety Code § 1597.465. (See Appendix A, p. iii).

⁵ California Civil Code § 1942.5(c). (See Appendix B, p. ix).

your residence, and a rent increase is arguably an attempt to discourage you from exercising that right.

Sometimes landlords are genuinely concerned about the increased costs from the child care program's use of utilities and water. A modest rent increase that accurately reflects these increased costs is probably permissible and fair.

The landlord must give you reasonable notice before imposing any increased costs on you. For example, if you rent on a month-to-month basis, the landlord should give you a 30 day notice before enforcing any changes in your rental agreement. However, if you have a lease for a rental term of several months, a year or more, the landlord cannot increase your rent or change any of the conditions in your lease until the term of your lease expires. The landlord is bound by the terms of the lease until it expires.

NOTE: Some leases contain provisions which allow for certain changes during the lease period. For example, your landlord may raise your rent for other reasons permitted by the terms of your lease and by any local rent control ordinance that may apply. Again, the landlord must give you reasonable notice, unless the terms of the lease indicate otherwise. We strongly suggest that you contact a lawyer or tenants' rights organization for advice as to whether it is advisable to challenge a rent increase in your particular circumstances.

Security Deposit

Can my landlord increase my security deposit because I am operating a licensed family child care home on the premises?

YES. Landlords have the **option** of charging family child care providers the maximum security deposit allowed under California state law, regardless of the amount charged to other tenants.⁶ Landlords may charge family child care providers security deposits that equal two months rent for unfurnished properties or 3 months rent for furnished rental properties.

This law **does not** require landlords to charge an increased security deposit. Furthermore, you do not have to inform your landlord of their option to increase your security deposit.

Can my landlord ask me to pay the increased security deposit immediately?

PERHAPS. The answer will depend upon the interpretation given by the court to this law and the terms of your lease or rental agreement. If the landlord requests an increase, you could have as little as 3 days, or as many as 30 days from the date of notification of the increase in the security deposit, to pay the increase.

The law is unclear as to whether the increase in the security deposit can be requested during the term of an existing lease and where the landlord previously knew that a licensed family child care home was being operated. It is advisable to check the terms of your lease or rental agreement to determine whether it allows your landlord to increase your security during the lease term. If not, the landlord

⁶ California Health & Safety Code § 1597.40. (see Appendix A, p. i).

may not be able to increase your security deposit until the lease has expired.

For example, if you rent on a month-to-month basis, the landlord may not be able to increase your security deposit until the next rental period. If you have a one-year lease, payment of the increased amount may not be not enforceable until your current lease expires and you enter into a new lease agreement. **To be prepared, you should start saving now** in the event that your landlord chooses to increase your security deposit to the maximum allowed by law.

If the increased security deposit is demanded, request that the entire security deposit earn interest and be credited to you. Although this is not required by law, some landlords may be willing to pay interest on this money. If the landlord allows less than 30 days to pay the increase, request in writing that you be allowed 30 days after notification from the landlord to increase the security deposit. Although the law is uncertain as to when the increase is to be paid, and the terms of the lease will control the time, a court would most likely not treat a request to pay the sum within 30 days as unreasonable.

(For information concerning security deposit refunds please refer to pages 24-25).

Insurance

Can my landlord require me to get liability insurance to cover my family child care program?

NO. As you probably know, California State licensing laws do not require you to obtain liability insurance for family child care.

Rather, you have the choice of either taking out insurance, obtaining a bond, or having parents sign an affidavit stating that they know you do not have insurance and that your landlord's insurance policy may not cover any accidents that might occur in your family child care home.⁷

California Health & Safety Code § 1597.40 (discussed above) prohibits the imposition of any conditions on your family child care operations. Thus, if your landlord tells you that you can only continue your operations if you take out an insurance policy, it is an illegal condition on your operations and is void: it cannot be enforced.

I f I already carry a liability insurance policy for my family child care home, can my landlord require that I add him/her onto the policy as an additional insured?

MAYBE. As noted above, you are not required to carry liability insurance for your family child care operations, and your landlord cannot force you to do so. If you do choose to take out a policy, however, your landlord can require you to add him/her onto the policy, **IF all** three of the following conditions are met:

- a) The request from your landlord to be added onto the policy is in writing;
- b) Adding the landlord onto the policy will not result in cancellation of the policy; and

⁷ California Health & Safety Code § 1597.531. (See Appendix A, p. iii, and Appendix D, Sample Affidavit, p. xv).

- c) The landlord agrees to pay any additional premium involved.⁸

Restrictions

Can my landlord impose restrictions on my hours of operation?

NO. Only California State licensing laws can regulate your hours. California State law simply says that your care must be for less than 24 hours per day.⁹ Any attempt by a landlord to restrict hours is an illegal condition on your operations and is void.¹⁰ Can my landlord prohibit me from placing a sign on the property advertising my child care business?

IT DEPENDS. Landlords are generally opposed to business signs posted on their rental properties. More importantly, most cities do not allow business signs on residential property. You should check your local city/county ordinance to determine if any restrictions on signs exist. If the ordinance bans business signs on all residential properties, then your landlord can prohibit you from placing a sign advertising your business on the premises.

Eviction

⁸ California Health & Safety Code § 1597.531. (See Appendix A, p. iii).

⁹ California Health & Safety Code §§ 1596.750, 1596.78.

¹⁰ California Health & Safety Code § 1597.40. (See Appendix A, p. i).

Can my landlord ask me to leave at any time?

NO. The landlord must give you **NOTICE** before asking you to leave. If you entered into a month-to-month tenancy agreement, your landlord is only required to give you a 30-day written notice to move without stating a reason.¹¹ If you have a lease covering a term (for example, 6 months, 1 year, 5 years), the landlord cannot end your lease until the term expires. If you violate a condition of the lease, however, the landlord only has to give you a 3 day notice to either correct the situation or leave.

NOTE: If you refuse to move at the end of the 3 day or 30-day notice period, the landlord can initiate legal action to evict you. You should contact an attorney or tenants' rights organization immediately.

Can my landlord evict me solely because I do family child care?

NO. California law¹² states that any attempt, whether verbal or written, to prohibit the use of property as a family child care home is void. (See Appendix A, p. i).

This means that your landlord cannot prevent you from starting a licensed family child care home or order you to stop operating one. Even if your lease specifies that businesses or family child care homes are prohibited, that section of the document has no legal effect: the law will treat it as if it does not exist. Although nothing can prevent your landlord from filing an eviction action against you, this law protects you from being forced out solely because you operate a family child care home.

¹¹ California Civil Code § 1946.

¹² California Health & Safety Code § 1597.40.

Good Relations

Do you have any suggestions for maintaining good relations with my landlord even though s/he is opposed to my operation of a family child care home?

Landlords cannot force you to restrict your operations (except if you choose to increase your capacity to 8 or 14 children), but you may take some steps to relieve some of his/her anxiety. Many landlords simply do not understand the nature of family child care. You can begin by educating them. For example, explain to your landlord that:

- a) family child care homes are very different from child care centers;
- b) no matter how successful your "business," State law prohibits you from ever caring for more than 14 children in a residence;
- c) drop-off and pick-up times, while occurring generally at the same time most people leave for and return from work, are usually staggered, so that all sets of parents are never arriving at the same time;
- d) licensing regulations require the tenant to maintain the premises in a safe and healthy condition at all times; and
- e) child care providers are usually good tenants because they want to provide a safe, stable environment for the children in their care.

Second, you may want to urge the parents in your program to be considerate of neighbors or other tenants by keeping noise levels to a minimum during drop-off and pick-up and refraining from parking in other tenants' spaces, blocking neighbors' driveways or leaving car engines running.

Finally, a landlord's liability concerns can sometimes be alleviated by adding the landlord onto your family child care liability insurance policy (if you have chosen or can afford to carry one) as an additional insured. See Insurance section at page 10. We encourage you to obtain liability insurance, if you can afford it.

What should I do if my neighbors complain to my landlord about my family child care business?

If your neighbors complain to your landlord about your family child care business, and their complaints have no merit, try to work with your landlord. Most neighbors complain about noise, toys being left outdoors or traffic and parking problems. Explain to your landlord that you run a well organized, professional child care program and invite your landlord to visit your operation. If you know which neighbors are complaining, try to speak with them about their concerns, for the purpose of reaching a mutual understanding.

If these complaints have merit, the landlord may serve you with a three-day notice to pay or quit on nuisance (for example, excessive noise) grounds. This means that the landlord is giving you a period of three days, beginning the day after you receive the notice, to correct the problem. If the problem persists beyond the three-day notice period, the landlord has the right to initiate eviction proceedings against you in court. Consult an attorney or tenants' rights organization immediately.

Refusal to Rent

Can a landlord refuse to rent to me because I plan to do family child care on the premises?

UNCLEAR. California law invalidates any provision in a lease that prohibits you from doing family child care. But what about the situation where, before a lease is ever signed, you are denied a rental facility because you indicated that on the rental application that child care is your sole source of income? The law is unclear on this issue.

It can be argued that state law prohibits the landlord from refusing to rent to a licensed child care provider. However, challenging a landlord in court might not be the best solution, because of the difficulty in proving the landlord's true motives for denying you the rental facility.

GENERAL LANDLORD/TENANT ISSUES

The following discusses some of the important State laws that may assist you in understanding your landlord – tenant relationship.

Repairs

Am I responsible for all repairs to my rented house or apartment?

NO. You (the tenant) are not responsible for all repairs. However, you are required by law to take responsible care of your rental unit and your common areas. You are also responsible for damage resulting from neglect, abuse, or damage caused by you, your guests or family members.

Your landlord is responsible for repairing conditions that make your home unsafe. He/she must maintain your rental unit in a condition fit for living.¹³ Furthermore, the rental unit must meet certain building and housing code standards. For example, your roof and walls should not leak, and doors and windows must not be broken.¹⁴

In the case of less serious repairs, your rental agreement may already state who is responsible for repairs. For example, if your rental agreement states that the landlord must repair the oven, the landlord must do so. If the agreement states that you must repair the item, however, you will probably have to because you agreed to this term when you signed the lease.

NOTE: Do not agree to be responsible for all repairs and maintenance, in exchange for a lower rent payment, unless you are sure that you are able to make all the necessary repairs.

What if I need my landlord to make repairs?

If you believe that your rental unit requires repairs, and you have determined that the repairs are the landlord's responsibility, you

¹³ Civil Code § 1941. (See Appendix B, p. vi).

¹⁴ Civil Code § 1941.1. (See Appendix B, p. vi).

should first notify your landlord. For your protection, it is best to notify your landlord of any damage or defects by both a telephone call and a letter. You should date the letter and keep a copy for your records after delivering the original to your landlord. If your landlord does not respond to your request in a reasonable amount of time, follow up your request with a telephone call.

What if my landlord still refuses to make repairs?

If your landlord still refuses to make repairs which affect the health and safety of people in your rental unit, you may use the repair and deduct remedy outlined below.

Repair and Deduct Remedy

This remedy allows you to deduct money from your rent to pay for repairs that are the landlord's responsibility and that he/she has refused to make in a timely manner. These repairs include serious defects that are related to health and safety (for example no running water or a gas leak).

The repair and deduct remedy allows you to make such needed repairs without filing a lawsuit against the landlord. However, we strongly suggest that you talk to an attorney first. Here is an overview of how the repair and deduct remedy works:

- 1) You must inform your landlord either orally or in writing of the needed repairs. Keep in mind it is best if this notice is in writing, so you will have a record of the request. The notice should describe the problem and the required repairs in detail. Finally, your written notice should give the landlord a deadline to make repairs. Make sure to put the date on the notice and keep a copy for your records.

- 2) You must give your landlord a reasonable amount of time to make the needed repairs. What is considered reasonable depends on the situation and the type of repair needed. Although the law usually considers 30 days to be reasonable, if the problem makes the rental unit unfit for living, a shorter period may be considered reasonable.
- 3) If your landlord does not make the needed repairs within a reasonable amount of time, you may either make the repairs yourself, or hire someone to do them. Then, deduct the cost from your rent.
- 4) When you pay your rent, deduct the cost of repairs and submit copies of the repair receipts to your landlord to justify the amount of the deductions.

NOTE:

- The amount of rent deducted for the repairs cannot be more than the amount of one month's rent.
- You cannot use this remedy more than twice in one year (any twelve month period).
- You cannot use this remedy if you, your guests, or your children caused the damages that need repairs.¹⁵

Your landlord can sue to recover the money you deducted from your rent, or attempt to evict you for non payment of rent. Furthermore, if you deducted money for repairs not covered by this remedy, a court may order you to pay the full rent even though you paid for the repairs.

¹⁵ Civil Code §§ 1929 and 1941.2. (See Appendix B, pp. vi and vii).

Finally, your landlord may try to evict you or raise your rent to punish you for using the repair and deduct remedy. It is unlawful for a landlord to raise rent or evict a tenant in retaliation for the tenant's exercising her legal rights.¹⁶ If you feel that your landlord is retaliating against you, you may want to **contact a lawyer or tenants' rights organization immediately.**

Can I withhold rent from my landlord until repairs are made?

YES. Another option for having repairs made is to invoke the rent withholding remedy. State law allows you to stop paying your rent if your landlord does not fix conditions that make your unit unsafe. As with the repair and deduct remedy, you must first give the landlord notice of the conditions and a reasonable time to repair them. Rent withholding is a very **extreme** remedy, and can be used only under the following circumstances:

- 1) The needed repairs or defects must seriously affect your health and safety and make the rental unsafe;
- 2) You did not cause the needed repairs or defects;
- 3) You gave the landlord reasonable notice of the problem; and
- 4) The landlord has not made the needed repairs.

NOTE: Before you stop paying rent, check with an attorney, or tenant organization to determine if this is the appropriate remedy for you to use.

¹⁶ Civil Code § 1942.5(c). (See Appendix B, p. ix).

Improvements

Do I need my landlord's permission to make major improvements to the property I am renting?

YES. If you intend to make capital improvements to the property you are renting, you will need your landlord's permission. Capital improvements are changes to the property which improve the value of the rental property. For example, replacing the plumbing, upgrading the wiring, painting the house, replacing the fixtures attached to the property are all considered capital improvements.

If you make any of the above improvements prior to getting your landlord's approval, your landlord may hold you liable for the costs of returning the property to its original condition. It is also important to note, that unless your lease states otherwise, these improvements become part of the landlord's property at the end of the lease term even if they were made by the tenant.¹⁷

Tenant's Right of Privacy

Can my landlord inspect my premises at any time?

The answer **DEPENDS** on whether or not an emergency condition exists. You have a basic right to privacy in your rental unit. California State law requires that a landlord give a tenant at least 24 hours notice before entering, except in an emergency, or if the

¹⁷ California Civil Code § 1013.

tenant has surrendered or abandoned the rental unit. The landlord can enter the rental unit only during normal business hours, (generally between 8:00 a.m. to 5:00 p.m. on weekdays), unless you agree to other times. Your landlord cannot use his/her right of access to your unit in order to harass you.¹⁸

Eviction

Can the landlord evict me if I don't pay my rent on time?

YES. Failure to pay rent on the agreed date is grounds for eviction. However, before the landlord begins legal action against you, he must serve you with a “3-day Notice to Pay or Quit.” If you offer to the landlord the rent in full within the 3-day period, the landlord must accept your payment. If you do not satisfy the 3-day notice requirement, the landlord can take you to court in order to evict you.

Can the landlord evict me for any other reasons?

YES. Failure to comply with any of the provisions in your rental agreement or lease is grounds for eviction. However, as stated above, before initiating legal action against you, the landlord must give you an opportunity to remedy the situation. He/she must serve you with a 3-day notice to cure or quit. If you resolve the situation within the 3-day notice period, the landlord should not proceed with a court action against you.

¹⁸ California Civil Code § 1954. (See Appendix B, p. xi).

For example, if your lease has a no pet clause and you have a pet on the premises, the landlord may serve you with a 3-day notice to remove the pet from the premises. If you fail to comply, the landlord has the right to take you to court.

I f the landlord takes legal action against me, do I have to pay court fees?

IT DEPENDS. If your income meets the court's low income guidelines, you may apply for a waiver of court fees.¹⁹ In addition, if you can prove that your income only covers your basic necessities, you may be granted a waiver of court fees. to apply, fill out the Application for Waiver of Court Fees and Costs available from the clerk's office. See Appendix D for income guidelines.

IMPORTANT! If you should receive any legal documents from your landlord, such as a "Notice to Quit" the premises or a complaint initiating an "Unlawful Detainer" (eviction) action against you, **CONTACT A LAWYER IMMEDIATELY!** These actions proceed on extremely short time lines (often 3-5 days) and any delay could result in your being forced out of the home or apartment.

Termination of Lease by Tenant

How do I end my rental agreement?

When you are ready to end your rental agreement, you must give your landlord proper written notice before the moving date. It is recommended that you date the notice, state the date you intend to

¹⁹ California Rules of Court, Rule 985.

move, and make a copy for your records. The clearer the notice is, the better hope for less disagreement in the future. In addition, it is best to deliver the notice to the landlord in person, or mail it by certified mail.

How much notice do I need to give to terminate my rental agreement?

The answer *DEPENDS* on the length of your rental agreement.

The amount of notice you must give your landlord depends on the term of your rental agreement. For example, if you pay monthly, you must give 30 days notice before you move. On the other hand, if you pay rent every week, seven days written notice is required. You will want to check your rental agreement to see if it provides for a shorter amount of time. California State law requires a minimum of seven days notice to end a rental agreement.²⁰

As mentioned previously, you should **give notice personally** to the landlord or the property manager, **or send it certified mail, return receipt requested.**

Finally, although you can give notice to end your rental agreement at any time during the rental period, you must pay the full rent during the period covered by the notice. For example, if you have a month-to-month rental agreement, and pay rent on the first day of each month, you can give notice anytime during the month (for example on the tenth). By giving notice on the tenth, you could leave on the tenth of the following month, but you would pay rent covering the first ten days of that month.

²⁰ Civil Code § 1946. (See Appendix B, p. x).

Security Deposit Refund

Under what circumstances can my landlord keep my security deposit?

In California, it is unlawful for a security deposit to be non refundable.²¹ State law allows landlords to retain part or all of your deposit under certain circumstances, however, such as if you move out and still owe rent, or if you leave the rental unit in a damaged condition. Because you are normally entitled to get your security deposit back when you move, make sure you have proof that you paid a security deposit. For example, your rental agreement should state the amount of the security deposit and when you paid it to the landlord.

Your rental agreement should describe the circumstances under which the landlord may keep part or all of the deposit. Most landlords will also provide you a written receipt for all amounts that you pay. Be sure that your rental agreement and the receipts are in a safe place.

When should I expect to receive the refund of my security deposit?

The law requires that **within three weeks** after you move, your landlord must send you a full refund of the security deposit, or an itemized statement that lists reasons for any deductions from the deposit, with a refund of any amounts not deducted.²²

²¹ Civil Code § 1950.5(l) (see Appendix B, p. xi).

²² Civil Code § 1950.5(f) (see Appendix B, p. x).

What if my landlord has made an improper deduction from my security deposit or my landlord keeps all of my deposit without good reason?

First, you need to tell your landlord why you believe it is improper for him or her to keep part or all of your deposit. Second, immediately ask for a refund of what you are entitled to. Finally, put this request in writing, and send it to the landlord by certified mail. You should ask for a return receipt to prove that the landlord received the letter. In addition, be sure to keep a copy of your letter and the receipt. If your landlord still does not send you a refund, you may want to sue your landlord in Small Claims Court.

A PPENDIX A

California Health & Safety Code

Section 1597.40 provides:

- (a) . . .
- (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 such 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) 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.

Section 1597.44 provides:

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 schoolage 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.

Section 1597.465 provides:

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 schoolage 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.

Section 1597.531 provides:

- (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 on 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 the 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 home-owners' 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 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.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

APPENDIX B

California Civil Code

Section 1929 provides:

The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

Section 1941 provides:

The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in section nineteen hundred and twenty-nine.

Section 1941.1 provides:

A dwelling shall be deemed untenable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing or gas facilities which conformed to applicable law in effect at the time of installation, maintained in good working order.

- (c) A water supply approved under applicable law, which is under the control of the tenant, capable of producing hot and cold running water, or a system which is under the control of the landlord, which produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
- (d) Heating facilities which conformed with applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment which conformed with applicable law at the time of installation, maintained in good working order.
- (f) Building, grounds and appurtenances at the time of the commencement of the lease or rental agreement in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin.
- (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.
- (h) Floors, stairways, and railings maintained in good repair.

Section 1941.2 provides:

- (a) No duty on the part of the landlord to repair a dilapidation shall arise under Section 1941 or 1942 if the tenant is in

substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation under Section 1941 to effect the necessary repairs:

(1) To keep that part of the premises which he occupies and uses clean and sanitary as the condition of the premises permits.

(2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.

(3) To properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.

(4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.

(5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.

(b) Paragraphs (1) and (2) of subdivisions (a) shall not apply if the landlord has expressly agreed in writing to perform the act or acts mentioned therein.

Section 1942 provides:

(a) If within a reasonable time after written or oral notice to the landlord or his agent, as defined in subdivision (a) of Section 1962, of dilapidations rendering the premises

untenantable which the landlord ought to repair, the landlord neglects to do so, the tenant may repair the same himself where the cost of such repairs does not require an expenditure more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due, or the tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. This remedy shall not be available to the tenant more than twice in any 12-month period.

- (b) For the purposes of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice.
- (c) The tenant's remedy under subdivision (a) shall not be available if the condition was caused by the violation of Section 1929 or 1941.2.
- (d) The remedy provided by this section is in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

Section 1942.5(c) provides:

It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of such acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and

security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

Section 1950.5(l) provides:

No lease or rental agreement shall contain any provision characterizing any security as “non-refundable.”

Section 1954 provides:

A landlord may enter the dwelling unit only in the following cases:

- (a) In case of emergency.
- (b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.
- (c) When the tenant has abandoned or surrendered the premises.
- (d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents at the time of entry. The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency, when the tenant has abandoned or surrendered the premises, or if it is impractical to do so, the landlord shall give the tenant reasonable notice of his intent to enter and enter only during normal business hours. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary.

A PPENDIX C

Notice of Current Operation of a Family Child Care Program in a Rental Property

I, _____, hereby notify _____
(tenant's name) (landlord's name)

of my operation of a family child care program on the premises located at _____.¹
(address)

Landlords are prohibited by law from imposing any direct or indirect restrictions on, or prohibitions against, a tenant's operation of their family care home on the rental property, notwithstanding receipt of this notice.²

The purpose of this notice is to notify _____
(landlord's name)

of my current use of the above-referenced property.

¹ A family care 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. (California Health and Safety Code § 1597.40).

² California Health & Safety Code § 1597.40.

Notice of Intent to Relocate and Operate an Existing Family Child Care Program in a Rental Property

I, _____, hereby notify _____
(tenant's name) (landlord's name)

of my intent to operate a family child care program on the premises located at _____.
(address)

Operation of my family child care home may occur prior to 30 days after provision of this notice.¹

Landlords are prohibited by law from imposing any direct or indirect restrictions on, or prohibitions against, the tenant's operation of the family care home on the rental property, notwithstanding receipt of this notice.²

The purpose of this notice is to notify _____
(landlord's name)

of my intent to operate a family care program on the above-referenced property.

Tenant Signature

Date

¹ For a family care provider who has relocated an existing licensed family child care program to a rental property on or after January 1, 1997, less than 30 days notice may be provided in cases where the Department of Social Services approves the license in less than 30 days.

² California Health & Safety Code § 1597.40.

30 Day Notice of Intent to Operate a Family Child Care Program in a Rental Property

I, _____, hereby notify _____
(tenant's name) (landlord's name)

of my intent to operate a family child care program on the premises located at _____.
(address)

Landlords are prohibited by law from imposing any direct or indirect restrictions on, or prohibitions against, the tenant's operation of the family care program on the rental property, notwithstanding receipt of this notice.¹

The purpose of this notice is to notify _____
(landlord's name)

of my intent to operate a family care program on the above-referenced property.

Tenant Signature

Date

¹ California Health & Safety Code § 1597.40.

General Relief/ General Assistance	Notice of Action <i>or</i> Copy of check stub <i>or</i> County voucher
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— **OR** —

2. Your gross **monthly household income** is less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	\$ 838.54
2	1,130.21
3	1,421.88
4	1,713.54
5	2,005.21

NUMBER IN FAMILY	FAMILY INCOME
6	\$ 2,296.88
7	2,588.54
8	2,880.21
Each additional	291.67

— **OR** —

3. Your income is not enough to pay for the common **necessaries** of life for yourself and the people you support and also to pay court fees and costs.



To apply, fill out the **Application for Waiver of Court Fees and Costs** [form 982(a)(17)] available from the clerk's office.

NOTE: The law requires Family Day Care providers to carry liability insurance or bond in the amount of \$300,000 annually or to maintain this signed statement in the facility file. Lack of a bond or insurance does not affect the right of parents to bring legal action against the facility.

APPENDIX D

Information Sheet on Waiver of Court Fees and Costs (California Rules of Court, Rule 985)

If you have been sued or if you wish to sue somebody, and if you cannot afford to pay court fees and costs, you may not have to pay if:

1. You are receiving **financial assistance** under one or more of the following programs:
 - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
 - CalWORKs (California Work Opportunity and Responsibility t Kids Act, implementing TANF, Temporary Assistance for Needy Families; formerly AFDC, Aid to Families with Dependent Children Program)
 - The Food Stamps Program
 - County Relief, General Relief (GR) or General Assistance (GA)

If you are claiming eligibility for a waiver of court fees and costs based on your receiving financial assistance under one or more of these programs, and you did not provide your social security number, you must produce a letter confirming benefits from a public assistance agency or one of the following documents, except if you are a defendant in an unlawful detainer action:

PROGRAM	VERIFICATION
SSI/SSP	Medical Card <i>or</i> Notice of Planned Action <i>or</i> SS Computer Generated Printout <i>or</i> Bank Statement Showing SSI Deposit <i>or</i> "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	MediCal Card <i>or</i> Notice of Action <i>or</i> Income and Eligibility Verification Form <i>or</i> Monthly Reporting Form <i>or</i> Electronic Benefit Transfer Card <i>or</i> "Passport to Services"
Food Stamp Program	Notice of Action <i>or</i> Food Stamp ID Card <i>or</i> "Passport to Services"

A PPENDIX E

Sample Affidavit Regarding Liability Insurance for Family Day Care Home

SECTION A: To be completed in full.

I/We the parent(s)/guardian(s) of _____,
(child's name)
acknowledge that _____,
(licensee's name)
the licensee of _____,
(name of family day care home)

has informed me/us that this facility does not carry liability insurance or a bond in accordance with standards established by Family Day Care statute.

SECTION B: To be completed only if licensee does not own premises or the licensee is a member of a condominium or Homeowner's Association.

I/We the parent(s)/guardian(s) of _____,
(child's name)
acknowledge that _____,
(licensee's name)
the licensee of _____,
(name of family day care home)

has informed me/us that she/he does not own the premises or is a member of a condominium or Homeowner's Association, and the liability insurance, if any, of the owner/Homeowner's Association 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/Homeowner's Association, for which the owner/Homeowner's Association would otherwise be liable under the law.

Signature of Parent(s)/Guardian(s)

Date

A PPENDIX F

List of Publications

PRICES SUBJECT TO CHANGE

1. **Proyecto Legal de Cuidado de Niños/Child Care Law Project.**
Description of Child Care Law Project in English and Spanish.
Free of charge.
2. **Family Child Care Providers' Rights & Responsibilities.**
Pamphlet covering Zoning, Landlord/Tenant, Contracts, Licensing,
Child Abuse Reporting, Tax Issues and Insurance. \$3.00
3. **Los Derechos y Responsabilidades de Operadoras de
Guarderías Caseras.** Spanish language version of *Family Child
Care Providers' Rights & Responsibilities* pamphlet. \$3.00
4. **AIDS in Child Care Settings.** Pamphlet examining the legal
responsibilities of child care providers who care for children who
have AIDS or are HIV-infected (including confidentiality and
discrimination). \$3.00
5. **Preguntas y Respuestas Sobre El SIDA en Guarderías de
Niños.** Spanish language version of *AIDS in Child Care Settings*.
\$3.00
6. **Child Care and Zoning.** Pamphlet covering State law restrictions
on local (city) regulation of large family child care homes and
centers. Includes examples of local child care ordinances and
recommended actions for child care providers. \$3.00
7. **Guidelines for Releasing Children and Custody Issues.**
Pamphlet covers the provider's rights and responsibilities when
releasing children into the parent(s)' or guardian(s)' care. Includes
explanation of custody orders and recommendations for situations
involving non-married parents, separation, divorce, domestic
violence and child abuse. \$3.00

8. **Guia Sobre La Entrega de Niños en su Cuidado y Asuntos de Custodia.** Spanish language version of *Guidelines for Releasing Children*. \$3.00
9. **Parent-Provider Contracts in Family Child Care.** 15-page booklet examining why using contracts makes good business sense, including a detailed sample contract and explanatory appendix. \$4.50
10. **Contratos Entre Padres y Proveedoras de Cuidado de Niños en Guarderías Caseras.** Spanish language version of *Parent/ Provider Contracts in Family Child Care*. \$4.50
11. **Sample Admission Agreement for Child Care Centers.** 32-page booklet that includes a sample admission agreement, an explanatory appendix, a discussion of State law requirements for center agreements, and a sample table of contents for a parent handbook. \$6.00
12. **When Parents Owe You Money.** Pamphlet that covers what child care providers can do to try to recover money owed them and what steps they can take to reduce the chances of this happening again in the future. \$3.00
13. **Que Hacer Cuando Padres Le Deben Dinero.** Spanish language version of *When Parents Owe You Money*. \$3.00
14. **Family Child Care Providers: Know Your Rights As Tenants.** Pamphlet that answers commonly asked questions about landlord restrictions on family child care operations, rent and security deposit increases, insurance and general principles of landlord/tenant law. \$3.00
15. **Operadoras de Guarderías Caseras - Conozcan Sus Derechos Como Inquilinas.** Spanish language version of *Family Child Care Providers: Know Your Rights as Tenants*. \$3.00
16. **Family Child Care Providers: Know Your Rights as Homeowners.** Pamphlet that answers commonly asked questions about deed restrictions, insurance, neighbors, and taxes. Additionally, it discusses questions about a homeowners' association's right to impose restrictions on family child care operations, including fines, insurance and foreclosures. \$3.00

17. **Emergency & Disaster Preparedness and Recovery Issues for Family Child Care Homes and Child Care Centers.** This pamphlet informs nonprofit child care centers and family child care providers of their rights and responsibilities regarding disaster preparedness, recovery efforts and emergency plans, including an earthquake checklist. \$3.00
18. **Preparación en Caso de Emergencia y Asuntos de Recuperación Para Guarderías Domésticas de Cuidados Infantiles y Centros de Cuidados Infantiles.** Spanish language version of *Emergency & Disaster Preparedness and Recovery Issues for Family Child Care Homes and Child Care Centers*. \$3.00
19. **Obligations and Possible Liabilities of Directors of Charitable Nonprofit Corporations.** This pamphlet addresses the duties and obligations of directors of charitable nonprofit corporations. \$4.00
20. **Forming a Charitable, Tax-Exempt, Nonprofit Corporation.** This pamphlet addresses nonprofit incorporation, tax exemption under federal law and how to form a nonprofit organization. \$3.00
21. **Child Abuse/Domestic Violence and Child Care.** This pamphlet discusses providers' rights and responsibilities as mandated child abuse reporters, abuse in the child care setting, and domestic violence issues related to child care. \$3.00
22. **Faith-Based Organizations and Child Care Centers.** This pamphlet addresses the legal issues involved when a faith-based organization decides to operate a child care center. \$3.00
23. **Employment Law Issues for Child Care Programs.** This pamphlet covers a wide range of employment issues including hiring, performance evaluations, personnel policies, firing and a special section on independent contractors. \$3.00

NOTE: Receiving and/or reading this pamphlet does not make you a client of Public Counsel or Public Counsel's Child Care Law Project. This pamphlet is only intended to provide general information, and is not intended to provide, nor is it the equivalent of, legal or professional advice. If you have a question or problem regarding the matters discussed here, you should consult an attorney.

For more information, contact:

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Los Angeles, CA 90005
(213) 385-2977, ext. 300