

HOA Brief Newsletter

Tips for the HOA Community

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There is a New Day Care Home in the Association - *What can the Board Do?*

Associations cannot prevent the running of a home day care at a residence in the Association. As a matter of public policy, under Health and Safety code section 1597.40(a),



children in a day care home are to be provided the same environment as is provided in a traditional home setting. As a result, the California legislature has declared day care centers in residential single-family homes cannot be prohibited, and determined that any restrictions that directly or indirectly limit the acquisition, use, or occupancy of property for a family day care home for children are invalid and unenforceable. H&S §1597.40(c). A "day care home" is defined as one that regularly provides care, protection, and supervision for 14 or fewer children for periods of less than 24 hours per day." H&S §1596.78(a).

While they cannot be prohibited, Day Care homes are subject to reasonable regulations. Such regulations can include the following:

1. **Requirement for proper licensing.** The Day Care Home operator must obtain proper licensing. Different conditions and requirements are imposed by California law for small family and large family day care homes. H&S §§1597.44-46; 1597.465. "Large family day care home" means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home. "Small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home. H&S §1596.78(b)(c). The Board should insist that any day care operator provide a copy of a valid license, which should then be validated with the local Community Care Licensing Division Child Care Office.

2. **Requirement to Comply with Local & State Laws.** Day care operators must comply with all local and state laws regulating the licensing and operations of a day care center. The California Health and Human Services Agency distributes a manual, entitled "Manual of Policies and Procedures, Community Care Licensing Division" which sets forth the regulations and operating procedures of a licensed family day care home.

3. **Requirement Proper Insurance or Affidavits.** Day Care home operators must maintain liability insurance in the amount of at least \$100,000 per occurrence and

\$300,000 aggregate, or a bond in the aggregate amount of \$300,000. Alternatively the home can obtain affidavits signed by each parent with a child enrolled in the center that states that the parent knows that the day care center does not carry insurance or a bond. If there is insurance or a bond, the association may require that it be named as an additional insured, provided that the association is responsible for the cost of any additional premium which results from this coverage, that the request is made in writing, and that the request does not result in the cancellation or nonrenewal of the policy or bond carried by the day care home. H&S §1597.531 The association may also obtain insurance on its own to cover any potential liability arising from the presence of the day care home. Boards should notify the Association's insurance broker of the presence of the day care home, and inquire about any additional insurance that may be available.

4. Requirement to Abide and Comply with the Association's Rules and Regulations.

While Day Care Homes cannot be prohibited, operators and the children in the home must abide by and comply with the Association's Rules and Regulations while in the Association.

5. Requirement to Supervise Children. Day care operators must supervise children when they are on the premises, including their use of the association's recreational facilities.

6. Requirement Not to Create a Nuisance. Local nuisance ordinances may come into play should the Day Care Home impact the surrounding community to the extent that it can be deemed a nuisance. This is especially of concern in high density communities.

7. Indemnification. A day care operator should also be asked to agree to defend and indemnify an association against claims arising out of the operation of the day care home.

Any board that has questions regarding the operation of a day care home in their community should discuss the matter with the association's legal counsel.

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