

**Day Care**  
**This Probably Never Happened To You, But...**  
**(#119)**

The tenant from #3 called to inform you that he intends to start running a day-care operation out of his apartment.

If you do not know already, you cannot prevent this use. The State of California has made a clear, legislated decision that day-care operations are in the best interest of the people of this state, and therefore must be allowed to operate wherever the operator of that day-care operation chooses.

However, there are some elements of the law that offer you as the property owner some protection.

The first is an authorization for you to require the day-care operator to increase his or her security deposit to the maximum: two-times the monthly rent. And you can do this even if other tenants are not required to post such high security deposits. Your decision to raise the security deposit should be given to the day-care operator in writing. If this obligation is not met, the law would seemingly allow you to evict that tenant. If you should choose this course, experienced legal representation would seem prudent.

The law also mentions insurance, and seems to recommend a level of \$100,000 per occurrence, and \$300,000 aggregate. This issue raises a bigger question, that of businesses in general being operated on your property. Our House Rules have always precluded businesses in our residential properties. However, with this new day-care issue, we may alter those rules as follows: "Business, except as authorized by state law (i.e. day-care operations) may not be conducted on this property without the written permission of the owner. If such permission is granted, or where such business is authorized by state law (i.e., day-care operations), any business that involves visits by non-tenants shall provide proof of current liability insurance naming the owner as Additional Insured, with a minimum policy level of \$100,000 per occurrence and \$300,000 aggregate". This, so far as I know, is untested legal territory. Requiring such insurance of any business operating on your property treats all fairly and equally. As with the demand for increased Security Deposit, the demand for insurance coverage should be given in writing.

And remember, anyone running a day-care operation will be bound to all of the other House Rules that apply to every other tenant. If your House Rules preclude the use of the common areas as a play-ground, then this would apply to the day-care children as well. But if your facility happens to have a pool, it would seem that the day-care children would have equal access to the pool as would any other tenant. So, even if you require the day-care operator to carry insurance, be sure that your own policy is more than adequate.

Like it or not...it's the law, and has been since 1997. Just thought that I should remind you. California Civil Code 1597.40

Dear Readers: This article is the 119th in a series based on the lessons we have learned the hard way. The contents of these articles are merely opinions of the writer. They are not intended as specific legal advice and should not be relied upon for that purpose. Our practice is in constant refinement as we adjust the way we operate to an ever-changing market. I appreciate your questions, comments, suggestions, and solutions. Contact C. FinBeven, CPM, 99 S. Lake Ave, Pasadena, CA 91101. (626) 795-3282, ext.111.  
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