

FAMILY CHILD CARE AND RESTRICTIVE COVENANTS

In 1989, the Maryland General Assembly added section 111.1 to Title 11B of the Real Property Code. This law prevents phrases commonly found in condominium agreements and homeowners' association bylaws from being interpreted to prohibit family child care. There were further modifications pertaining to new developments and repealing a provision that regulated a certain number of family child care homes operating in the homeowners' association.

In order to preserve the residential atmosphere of their developments, condominiums and homeowners' associations often include provisions in their bylaws, homeowners' agreements and other related documents requiring that the units be used "for residential purposes only" or that no "business, trade or commercial activity" be conducted on the premises. Homeowners' associations and condominiums have attempted to use these broad provisions to shut down family child care providers even though child care, by its nature, fits in with residential developments.

The law defines operations of a registered family child care home as a residential activity and protects family child care from being prohibited under "no business or trade" and "residential use only" restrictions. The law also protects the family child care providers' use of roads, sidewalks and other common elements of the development, such as swimming pools and playgrounds.

An association or condominium can, however, incorporate a specific ban on family child care into its declaration, bylaws or recorded covenants and restrictions. To do so, it would need a simple majority vote of all its eligible voters (not just those attending a meeting). If an association or condominium adopts such a specific ban, it must also adopt a provision saying that the ban may be overruled by another simple majority vote.

The law specifically addresses the dilemma of new developments where the developer is essentially the homeowners' association. A provision prohibiting the use of a residence for family child care may not be adopted until the lot owners, other than the developer, have 90% of the votes in the homeowners association.

In addition, the law includes the following provisions intended to reconcile the interest of development associations and child care providers.

- Condominiums and associations may require notification before a provider begins offering family child care.

- Condominium and associations may charge each provider a fee of up to \$50 per year for use of common areas.
- If condominiums and associations suffer an insurance premium increase which is solely and directly attributable to the presence of family child care providers in their developments, associations and condominiums may charge each provider a pro-rated portion of the increase.

Finally, the law requires providers operating in homeowners' associations and condominiums to carry liability insurance to cover their family child care activities. Condominiums and homeowners' associations may not require providers to carry more coverage than the legal minimum.

What You Can Do If Your Association Tries To Prohibit Family Child Care

Some associations may decide that they wish to prohibit family child care altogether. Often Boards and members of homeowner and condominium associations do not understand what family child care is and think of childcare centers. They are concerned about traffic, noise and damage to common property.

If you are notified that the association you belong to will hold a vote to prohibit family child care, you can and must gain the support of the members of your association. This should not be difficult to do. Below are steps you should take.

1. Call the other family child care providers in your neighborhood association or condominium. Meet with them and decide what action you will take to protect your right to provide family child care. If you would like the names and numbers of other providers, call Maryland Committee for Children, your regional Child Care Resource and Referral Center or the Office of Child Care in your region.
2. Make sure the Board members of your association understand family child care. Call each one individually and talk with them before the next Board meeting. Listen to their concerns and try to address them. Make sure they understand that:
 - a. **Family Child Care is different than center-based care.** You care for only eight or fewer children. This means there is little traffic or noise.
 - b. **Children in family child care are well supervised.** The regulations governing family child care mandate that all children are supervised while in care. This means the provider is to be physically present on-site and within sight or sound of the children at all times at the family child care home.
 - c. **You are supervised and registered by the state of Maryland.** You and your home are inspected by the state of Maryland to ensure that you are giving children good, safe care. You have regulations that you have to obey. If they or anyone in the area feels you or any provider is not taking

good care of the children, they can report you to the Office of Child Care. They will investigate all complaints, even anonymous ones.

- d. You carry your own liability insurance.** If you don't have liability insurance, get it. You can get a rider on your homeowner or renter's policy for a reasonable rate. The law requires that family child care providers living within associations carry liability insurance.
 - e. Emphasize all the advantages of having family child care in the community.** For example, you may be the only adult at home during the week and may collect packages for your neighbors, take care of children who have forgotten their keys and watch out for intruders. If most of the children you care for are in your neighborhood, stress this as well.
3. Obtain a list of the names and addresses of all the members of your association. This is very important if you live in a condominium and there are absentee owners. Condominium owners have a legal right to get the names and addresses of all other owners. You can obtain the list from the Board of the association or the manager. Put your request in writing so that you have proof that you have formally asked for the list.
 4. Try to talk to as many of your neighbors as possible. Go door to door if you can. Enlist the help of parents who are also members. At the very least, distribute a letter of all the members of your association stating your side of the issue. Often the Board of your association will distribute information about family child care that is inaccurate and/or misleading. For example, they will talk about childcare "centers" or say that the insurance rates of the association will increase if there is a family child care. It is important that your neighbor hear the truth from you. We have enclosed two sample letters you can use to write your letter.
 5. If you live in a condominium, write to the absentee owners. You can be sure that the Board has. The absentee owners need to hear your point of view.
 6. Attend the next association meeting and raise the issue. Use the talking points listed above and make a good case for family child care. Make sure that all the parents of children in your care who are members of the association attend.
 7. Read your association bylaws. Make sure they are running the election according to the procedures stated in the bylaws.
 8. If the children you care for live in the association involve their parent. They can make the best case for family child care.
 9. Be strong, confident and self-assured. You do an important job and perform an important service to your community. Try not to take the actions of your association personally. Assume they just don't yet understand how important your work is and education them.

10. Act quickly. Don't wait and hope this will go away because it won't! Begin to talk to your neighbors, other providers and the parents who use your service.

Several homeowner and condominium associations have tried to circumvent the law with incorrect interpretations. One association interpreted "eligible members" as the members who came to the meeting to vote; this is incorrect. A bylaw change that prohibits family child care can only be passed by a simple majority of all eligible members of the association. If you suspect that your association illegally passed the prohibition, you can call the Maryland Committee for Children for additional information.

If you need further assistance, please consult your local or state family child care providers association (see enclosed list), or your regional Child Care Resource and Referral Agency.

Sample Letters You Can Use

Sample #1

Dear Neighbor,

Hello. My name is _____. I own a home and live, with my husband and _____ children, at _____ (address) _____. I am also a family child care provider. I care for _____ other children in my home while their parents are at work.

Last month, I got a letter from the _____ (homeowner/condominium) _____ association talking about an amendment to the bylaws prohibiting the use of my home as a family child care home, I was very upset by this. The amendment outlaws family child care.

As a registered family child care provider, I am only allowed to care for up to eight children, counting my own children under two years old, in my home. I care for _____ children, ages ____ through _____. I am registered by the state of Maryland and have to conform to a number of regulations. They check to see that I give children the proper supervision, do not have more children than I can handle, treat the children properly and that my home is safe for young children.

I perform an important service for our neighborhood's working parents and their children. I am proud of what I do and take my responsibility very seriously. I closely supervise the children and plan many enjoyable and educational activities for them throughout the day. According to the regulations, they must be within sight and hearing at all times. They are never allowed to run around on the streets. My children play in my house or yard. My immediate neighbors have never complained about the children I watch. And, if any problems arose, my neighbors could complain to the Child Care Administration, who would investigate.

I believe that, as a family child care provider, I make our community a better place to live. Very often, I am the only person home in my building. I keep an eye on the other condominiums. I often accept packages for my neighbors who work during the day. If my neighbor's children are locked out, they know they can count on me.

Please let me continue to stay home with my children and care for the others. Please vote NO to the proposed amendments to the bylaws.

Thank you for your attention. Please call me if you have any questions. My phone number is _____.

Sincerely,

Sample #2

Dear Home/Condominium Owner:

As a prospective provider of family child care (care of several children in my home) and an owner of a condominium unit in the _____ Homeowner/Condominium Association, I am writing to ask you to vote against the bylaw change recently proposed by the Board of Directors. The reasons cited by the Board for the proposal are irrational and should be soundly rejected in favor of more reasonable policies.

Family Child Care Operations in the Association Will Not Affect Your Association Fees. The Board of Directors suggests that family child care operations would “drastically increase” the cost of the association’s insurance and in turn would raise your monthly fees. This assertion is simply untrue. First, it is not at all clear that family child care operations would affect the insurance rates for the association at all. Under Maryland law, all family child care providers in homeowner’s associations are required to obtain liability insurance for their child care programs. I, too, have insurance to cover liability relation to my family child care. Importantly, under the legislation, if the cost of the condominium’s insurance were to increase as a direct consequence of family child care operations, all of those additional costs could be assessed against the family child care providers in the association. For these reasons, there is absolutely no factual basis for the Board’s fears.

Licensing Regulations in Maryland Ensure that Family Child Care Providers Run Safe and High Quality Programs. The Board of Directors suggests that our homes are too small for family child care. But Maryland’s regulators have already invested their thought and expertise to determine the appropriate size and other safety requirements for family child care. Our state and county licensing regulations set high standards for family child care and they serve as models for states throughout the country. The guidelines ensure that family child care providers care for only the number of children they can properly care for in the space available. They also establish numerous other standards to ensure the safety of children. The Board of Directors should not second guess those rules by setting their own blanket prohibitions. The provider’s license offers sufficient assurance of the quality of the family child care.

There is No Basis for Believing that a Few Family Child Care Operations Will Bother Those Other Homeowners Who Stay at Home During the Day. I am licensed to care for ____ children, including my own. It strikes me as entirely implausible that my family child care operations will disrupt the lives of other members of the association. Indeed, my program, like all family child care operations in Maryland, is comparable in size to many families.

Family Child Care Providers Offer an Extremely Valuable Service. This is not only for residents in that association, but also for the surround community. Nearly

everyone acknowledges the need for good, affordable child care services. We should not discourage the provision of those vital services by prohibiting them in this association.

Family Child Care Operations Improve Daytime Security for the Association. Providers who care for children in their homes are also able to notice suspicious activity on or near association property.

I hope that you will note against this unnecessary and unwise proposal. Please call me if you have any questions. My phone number is _____.

Sincerely,