

HCBS LEASE/RESIDENCY AGREEMENT REQUIREMENTS - SUMMARY¹

<u>Discharge Rule OAC 5123:2-3-05 (Licensed Facilities)</u>	<u>Landlord-Tenant Law (ORC Chapter 5321)</u>
<p>The facility can only discharge or transfer the individual from a facility for 5 reasons (necessary for welfare/needs can no longer be met, no longer needs or wants services, unreasonable risk of harm, non-payment, ceases to operate).</p> <p>Before a facility transfers or discharges an individual, the facility must provide notification and reasons for move in writing that explains appeals rights. Notice of discharge or transfer must be made at least 30 days before the discharge or transfer, except when an emergency exists. If at any time prior to the expiration of the 30-day period the provider determines that the conditions that constituted the emergency no longer exist, the individual may then return to the facility. Are specific requirements for the actual notice, including listing the effective date of transfer/discharge, summary of action taken by the provider, and telephone number/address of OLRs. The notice must be sent by certified mail. If a discharge or transfer hearing is requested, the facility must maintain services or the availability of services until a decision is rendered after the hearing unless an emergency exists.</p> <p>There is an administrative review, mediation, and hearing process: (1) Admin. Review: Must first appeal in writing to the governing board or administrator of the facility within 7 days of the receipt of the transfer or discharge notice. The governing board or administrator reviews the decision and notifies in writing the outcome of the review within 5 days of the request for the review. The individual, parent, guardian, or advocate has 5 days from receipt of the governing board or administrator review decision to appeal to the director. (2) Mediation: Mediation meeting (nonbinding) held prior to scheduled hearing; is scheduled within 15 days of receipt of the appeal. (3) Hearing: Hearing scheduled within 15 days of mediation. The Director appoints a hearing officer for the appeal. The burden of proof at the hearing is on the provider to show that the discharge/transfer was in accordance with this rule. Both parties can have legal representation. The hearing officer issues a written recommendation within 10 days of the conclusion of the hearing to the Director, and the Director issues a written decision within 5 days of receipt of the hearing officer's recommendation and no later than 45 days from receipt of the hearing request. [Timelines can be extended upon mutual agreement of the parties.]</p>	<p>ORC 5321.17 Termination of tenancy notices: Landlord or tenant may terminate/fail to renew a week-to-week tenancy by notice given the other at least 7 days prior to the termination date specified in the notice; month-to-month tenancy requires 30 days prior notice.</p> <p>ORC Chapter 1923 Eviction Process (Action for Forcible Entry and Detainer): Persons subject to eviction includes those that have breached obligations that affect health and safety; breached rental agreement; and violated drug laws. See ORC 1923.02.</p> <p>Before initiating eviction proceedings, landlord must first provide notice 3 or more days before beginning the action ("3-day notice requirement"). Notice must be sent by certified mail or by handing a written copy to the defendant in person, by leaving at defendant's usual place of abode, or at the rental premises. ORC 1923.04. Must also give tenant required termination notice above prior to 3-day notice (except for circumstances involving drugs). Id. Three-day notice by landlord shall contain the following language printed or written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance." Id.</p> <p>After 3 days, landlord can file a complaint with a court (can be a county or municipal court or court of common pleas). ORC 1923.05, 1923.01. The summons shall be served by the clerk to the defendant at least 7 days before the day set for trial. ORC 1923.06. The summons must contain the following language printed in a conspicuous manner: "A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association." Id.</p> <p>Defendant can assert defenses (or counterclaims) at trial. ORC 1923.061.</p> <p>If court rules in landlord's favor, within 10 days of receiving the writ of execution, the sheriff, police officer, constable, or bailiff shall execute it by restoring the plaintiff to the possession of the premises. ORC 1923.14.</p>

¹ HCBS Final Rule requires that in a provider-owned or controlled residential setting that the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. **For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**