

Q &As: Common Questions from Consumers Regarding Terminations from Assisted Living Facilities

In 2021, a new licensure system went into effect for Assisted Living facilities in Minnesota. Residents have increased protections against termination of their housing and services. Among the most important of these new rights is freedom from arbitrary termination and discharge from the facility. To help preserve this right, the statute and rules that make up the new licensure system provides for a series of critical due process protections.

If you believe the facility is trying to terminate your housing or services, consult the questions below and contact the suggested resources for more help. This document provides answers to some *basic* questions you might have about the termination process in an Assisted Living facility. In addition, if you are proceeding with an appeal of a termination, you may want to review the *Consumer Manual to Prevent and Address Terminations from Assisted Living Facilities*, also produced by the Minnesota Elder Justice Center. You can request a digital copy of that manual at <https://elderjusticemn.org/resources/mejc-materials/>.

1. Can the facility kick me out, evict, me, or force me to move?

Before the facility can legally force you to move, there is a very specific process they have to go through, giving you the chance to appeal if you believe they are wrongfully terminating you. This guide answers basic questions about each of these parts of the process.

The process includes:

- 1) Pretermination Notice and Meeting
- 2) Termination Notice
- 3) Appeal
- 4) Appeal Hearing
- 5) Coordinated Move (if you have to move)

2. What are the reasons the facility can terminate my housing or services and force me to move?

There *are only six reasons* a facility can terminate your housing or services:

- 1) You do not pay for your rent or services
- 2) You violate the Assisted Living contract
- 3) You engage in conduct that substantially interferes with the rights, health, or safety of other residents or staff
- 4) You engage in conduct that substantially interferes with your own health or safety
- 5) Your assessed needs exceed the scope of services in the contract (and the facility does not offer the services you need)
- 6) Extraordinary circumstances exist, causing the facility to be unable to provide the services you need

The facility must give you notice that specifically states which of these reasons they are using to terminate your housing or services

3. I just received a pre-termination notice – what is this?

The pre-termination meeting (and the written notice that precedes the meeting) represents the first “stage” of an Assisted Living termination.

The pre-termination is an opportunity to listen carefully to the reason for the proposed termination and the underlying concerns the representatives of the facility are raising. It could help prepare a defense to the termination, or offer suggestions as to how to resolve the dispute without a termination.

You are under no obligation to offer up information that the provider might later use against you, or to agree to anything you do not want to do during this meeting, including signing documents on the spot.

At the meeting, the facility representatives may indicate that it would be best for all parties to just end the tenancy. It is critically important for you to understand that the *facility* is initiating a termination when the facility tells you they should all end the tenancy, and that you, the resident, *have the right to stay in the facility while you appeal any termination of the contract.*

Action Step: If you get a pre-termination notice – reach out right away to the Ombudsman’s Office for Long Term Care. They can help residents navigate the termination process and may be able to help you with the meeting.

Breakdown of Pre-Termination Timeline

- 1) Resident Receives Written Notice of the Pre-Termination Meeting
- 2) Waiting Period - 5 Business Days
- 3) Pre-Termination Meeting Occurs
- 4) Resident Receives Written Summary of Meeting within 24 hours
- 5) Termination Notice Given to Resident Must be 7 Days After Pre-Termination Meeting or 24 Hours if an Emergency Relocation

4. How do I appeal? When should I appeal?

After the pre-termination hearing, the facility must give a written summary of that meeting. If they are still planning to move forward with a termination, they must give a new notice called the Termination Notice.

In order to appeal, you must follow the instructions on your Termination Notice. If you do not have a notice – contact one of the resource offices on this guide immediately for help with the appeal.

There are four reasons that a resident may appeal a termination. The reasons are:

- 1) You disagree that the facility has a permissible basis to terminate.

- 2) The termination would result in great harm or the potential for great harm to the you.
- 3) You have fixed or shown the ability to fix the underlying reasons for the termination, or identified a reasonable alternative to the termination.
- 4) The facility has terminated the contract in violation of State or Federal law.

If you are unsure of any of these reasons, you should still send in an appeal to preserve your right to a hearing. If you do not appeal within 14 days of the notice, you may lose your chance at a hearing.

5. Can I still receive services while my appeal is pending?

Yes, you are allowed to remain in your home while the appeal is pending as the law requires that “a termination of housing or services shall not occur” during that time. But, if you need additional services to help meet health and safety needs, you may have to cover the expenses for those services.

6. What happens at the appeal hearing?

The appeal is run by an Administrative Law Judge who will make the ultimate decision about your case. The hearing could happen in person at the facility or virtually.

Before the hearing you (or your attorney) may receive instructions from the judge about the case. If you are going to a hearing, it is advisable to you seek legal help – either advice about your case or an advocate (may or may not be an attorney) to represent you and present your case at the hearing.

At the hearing, both sides argue their case in front of the administrative law judge. Either side may be represented by an attorney if they wish. The judge may ask questions throughout the hearing. Within 5 days after the hearing, the judge will make a decision about your case.

7. What happens if I have to move?

If you lose the appeal and have to move, the facility still has to assist you in this process. Known as a Coordinated Move, the facility has to locate a safe place. A safe place is not a homeless shelter or a setting where there are not appropriate services for you. The facility must also cooperate with you and your family and friends, identify an appropriate service provider to meet your needs, and develop a relocation plan with you to coordinate the move.

8. Does the facility have to renew my contract?

No, the facility does not have to renew your contract. If this happens, they have to provide you with 60 days' notice, or follow all of the requirements of a termination described above (including giving you appeal rights). They also have to tell you why they are not renewing your contract.

If you receive a non-renewal notice, contact the Ombudsman immediately to discuss the reasons for the non-renewal and your rights and options moving forward.

Getting Help

Office of Ombudsman for Long Term Care

1-800-657-3591 or 651-431-2555

MBA.OOLTC@state.mn.us

mn.gov/board-on-aging/direct-services/ombudsman/

Legal Aid

<https://www.lawhelpmn.org/lawhelpmn-guide>

Minnesota Elder Justice Center

651-440-9300

<https://elderjusticemn.org/contact-us/>