

# Residential Service Contracts



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- DEPARTMENT OF HEALTH
  - DIVISION OF HEALTH CARE SERVICES
  - RESIDENTIAL LICENSING

# Learning Objectives

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At the end of this presentation, you will know:

- What is required to be in a residential service contract.
- How and when you can terminate a residential service contact.
- What are advanced deposits.
- How and when advanced deposits or rent must be refunded.
- What to do to increase rates.
- When your actions may be retaliatory.
- What are placement agreements.



# AS 47.33.210 Residential Service Contracts (a)

A person may not begin residency in an assisted living home unless a representative of the home and either the person or the person's representative sign a residential services contract that complies with the provisions of this section (AS 47.33.210).

Upon the signing of the contract, the home shall give the resident and the resident's representative, if any, a copy of the contract and place a copy of the contract in the resident's file.



# AS 47.33.210 Residential Service Contracts (a) Interpretations and Expectations

- A residential services contract is a contractual agreement to provide services in an assisted living home between the resident and the Home.
- A person **may not begin to reside** in an assisted living home without that person's consent, or, if the person is not competent, the consent of the person's representative.
- A person **may not begin residency** in an assisted living home unless a representative of the home and either the person or the person's representative signs a residential service contract.

## Residential Licensing expectation:

- The only exception to this expectation is in the event a Home accepts an emergency placement of an individual by Adult Protective Services. The Home should work to obtain appropriate signatures as soon as possible.
- If a contract is signed by a guardian of the Office of Public Advocacy (OPA) the contract does not need to be resigned by a new guardian, should it change, but a copy of the contract should be provided to the new OPA guardian.

AS 47.33.210  
Residential  
Service  
Contracts (a)  
Interpretations  
and  
Expectations  
Continued

- Upon signing of the contract, **the home must give** the resident and the resident's representative a copy of the contract and place a copy of the contract in the resident's file.
- A residential services contract **does not include** an agreement that is solely **for rent** or **solely for rent and food service**, or an agreement between an individual and a friend, personal care attendant, chore provider, or monitor who provides assistance to the individual.

## A residential services contract must

- 1) Specifically describe the services and accommodations to be provided by the assisted living home;
- 2) Set out the rates charged by the home;
- 3) Specifically describe the rights, duties, and obligations of the resident, other than those specified in this chapter;
- 4) Set out the policies and procedures for termination of the contract as provided for in this chapter;
- 5) State the amount and purpose of any advance payments required by the home; and
- 6) set out the home's policy for refund of advance payments in the event of termination of the contract or death of the resident.

AS  
47.33.210  
Residential  
Service  
Contracts  
(b) (1-6)

# AS 47.33.210 Residential Service Contracts (b) (1) Interpretation

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The contract must list the services and accommodations your home is providing a resident.

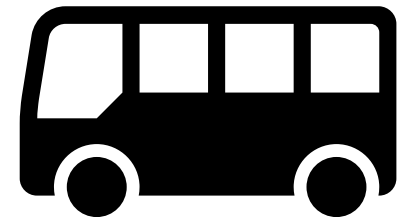
This should reflect the services offered by the home and any other services you agree to provide to a specific resident. This includes Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), and personal assistance.

## ADLs

- Bathing
- Toileting
- Eating/Meals – include food preferences and nutrition needs
- Mobility/Transfers
- Dressing

## IDLs

- Laundry/Cleaning of living areas
- Food preparation
- Managing money
- Conducting business affairs
- Using public transportation
- Writing letters
- Obtaining appointments/Using the telephone
- Engaging in recreational or leisure activities
- Transportation Services



# AS 47.33.210 Residential Service Contracts (b)

## (1) Interpretation Continued

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### Personal Assistance

- Assisting a resident in obtaining supportive services.
- Being aware of a resident's general whereabouts while the resident is traveling independently in the community.
- Monitoring a resident's activities while on the home premises to provide for the resident's and others' safety and well being.
- Assisting a resident in obtaining instrumental activities of daily living, as provided for in the resident's assisted living plan.

### Health Related Services

- Assistant with self-administration
- Medication administration
- Intermittent Nursing Services

### Accommodations

- Private Apartment
- Private Room
- Shared Room
- Personal restroom
- Any additional services the resident is responsible for paying (personal internet access, phone line, or cable)





# AS 47.33.210 Residential Service Contracts (b)

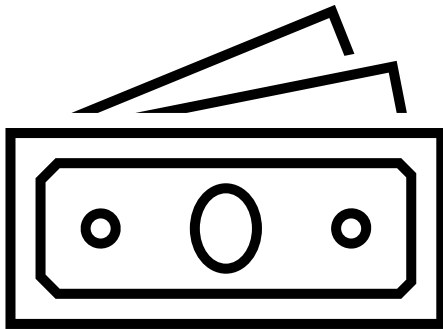
## (1) Expectation

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### Residential Licensing Expectation:

- The Home's residential service contract should accurately reflect the Home's list of services offered.
- A resident's residential service contract must be consistent with the service outlined in the resident's assisted living plan or individual service plan.
- If the Home serves individuals on Home Community Based Waivers or General relief, the Home must offer the same services and accommodations regardless of pay source.

# AS 47.33.210 Residential Service Contracts (b) (2)



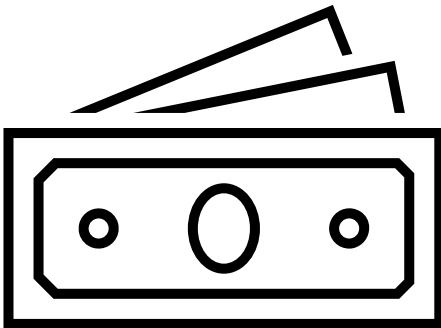
## Rates:

- The residential services contract must document the rates charged by the home.
- This should include the total cost for room, board, and care services.
- Include the total amount being charged even if someone else is paying.
- The Home should document funding sources and who is responsible for what portions of the cost of care.
- The rate can be either a daily rate or monthly rate.

# AS 47.33.210 Residential Service Contracts (b) (2) expectations

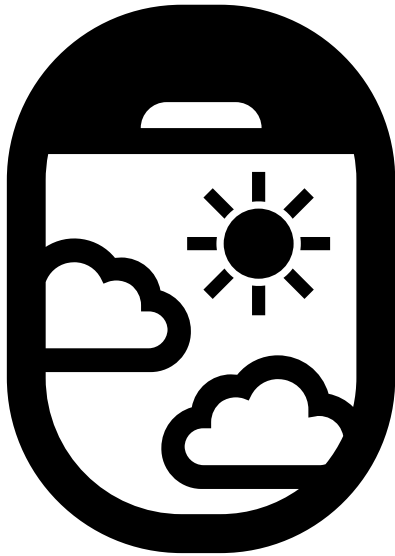
## Expectations:

- If an outside source is paying for an individual's cost of care or room and board and the amount varies monthly or yearly. The Home may include a cost sheet which documents the varying amount and indicate in the contract to see current cost sheet.
- Residential Licensing does not have a minimum or maximum rate a Home may charge.



# AS 47.33.210 Residential Service Contracts (b) (3)

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Describe the rights, duties, and obligations of the resident.

- This most often includes:
- House Rules and Notice of Resident's Rights.
- Notification of whereabouts.
- Short absence from the Home.

# AS 47.33.210 Residential Service Contracts (b) (4) & Involuntary Termination of Contract AS 47.33.360 (a)

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Set out the policies and procedures for termination of the contract as provided for in this chapter (AS 47.33.360)

AS 47.33.360 (a): An assisted living home may not terminate a residential services contract with a resident of the home against the resident's will, except

- 1) for medical reasons;
- 2) for engaging in a documented pattern of conduct that is harmful to the resident, other residents, or staff of the home;
- 3) for violation of the terms of the residential services contract, including failure to pay costs incurred under the contract;
- 4) when emergency transfer out of the home is ordered by the resident's physician;
- 5) when the home is closing; or
- 6) when the home can no longer provide or arrange for services in accordance with the resident's needs and the resident's assisted living plan.

# AS 47.33.210 Residential Service Contracts (b) (4) & Involuntary Termination of Contract AS 47.33.360 (b) (1-2)

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The home must give 30 days notice before terminating the residential services contract with a resident if the contract is terminated for the following reasons;

- For engaging in a documented pattern of conduct that is harmful to the resident, other residents, or staff of the home.
- Violation of the terms of the residential services contract, including failure to pay costs incurred under the contract.
- When the home is closing.
- When the home can no longer provide or arrange for services in accordance with the resident's needs and the resident's assisted living plan.

The Home may give 24-to-72-hour notice before the termination of the contract if the contract is terminated for the following reasons;

- Medical reasons.
- If an emergency transfer out of the home is ordered by the resident's physician.

The assisted living home shall provide written notice of the proposed contract termination to the resident or the resident's representative, and to the resident's service coordinator, if any. The notice must state the

- 1) Basis for the termination; and
- 2) Resident's right to contest the termination in the manner provided in the contract, which must include an offer by the home to participate in a case conference.

# AS 47.33.210 Residential Service Contracts (b)

## (4) Involuntary Termination Expectations:

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### Residential Licensing Expectations:

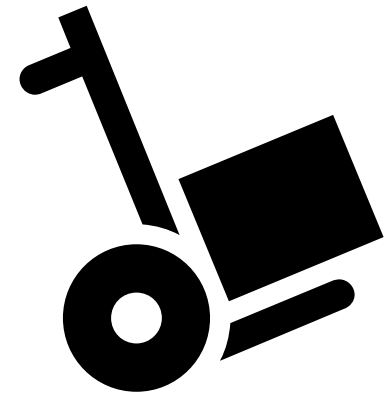
- The Home must provide written notice to the resident, their representative, and Care Coordinator of the decision to involuntarily terminate the residential service contract.
- A verbal notice to involuntarily terminate a residential service contract is NOT valid.
- The Home must submit a copy of the written notice to Centralized Intake and report the decision to involuntary terminate a contract.
- Provide supporting documentation with notice to justify the notice or have it readily available for review if needed.
- Work with the resident to facilitate the move make it a win-win outcome.
- Your licensing specialist make contact you and request additional information or documentation.

# AS 47.33.210 Residential Service Contracts (b) (4) & Involuntary Termination of Contract AS 47.33.360 (c)&(d)

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Before terminating the residential services contract with a resident under ((2), (3), (5), or (6) of this section, the assisted living home shall participate in a case conference if requested by the resident or the resident's representative. The case conference must include the resident, the resident's representative, if any, the resident's advocate, if any, the resident's service coordinator, if any, the home administrator, and appropriate care providers who may discuss the appropriateness of the contract termination.

If a home terminates the residential services contract with a resident under this section, the home shall cooperate with the resident, the resident's service coordinator, if any, and the resident's representative, if any, in making arrangements to relocate the resident.



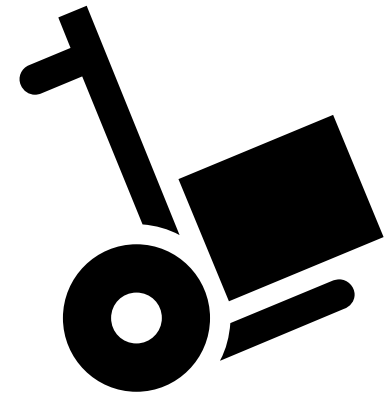


# AS 47.33.210 Residential Service Contracts (b) (4) & Involuntary Termination of Contract AS 47.33.360 (c)&(d) & Expectations

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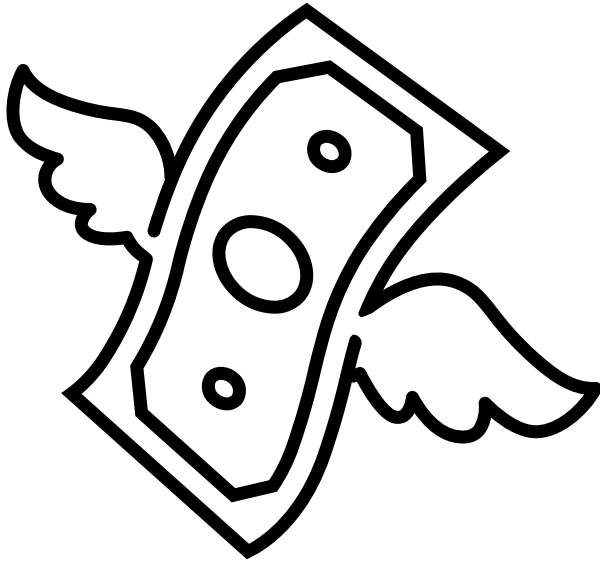
## Residential Licensing expectations:

- If the Home participates in a care conference, there is not expectation or requirement the Home resend the involuntary termination notice.
- Homes should be honest and truthful to other facilities when assisting a resident with new placement.
- Should a resident not find placement after the 30 days, the Home MUST follow landlord tenant law and go to the courts to legally evict the resident from the Home.
- It is unacceptable for a Home to drop a resident off at the hospital on day 31 and refuse the resident back to the Home. Residents are entitled due process.
- However, if a resident is admitted to the hospital for valid medical reasons before a valid 30-day notice is due, and resident remains hospitalized for days the 30-day notice is due; then the Home may decline to admit the resident back (The Home should have been in constant communication with Resident and or representative to have clear expectations of status of resident at the Home).



# AS 47.33.210 Residential Service Contracts (b) (5)

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- State the amount and purpose of any advance payments required by the home.

## Expectations:

- The Home's Residential Service Contract must explain the requirements and steps involved with accepting advanced payments. The statutes regarding this requirement can be found under AS 47.33.030.

# AS 47.33.210 Residential Service Contracts (b) (5) & AS 47.33.3030 Advanced Payments (a) (1-5)

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An assisted living home may not require a resident or prospective resident of the home or a resident or prospective resident's representative, to make an advance payment to the home except as

- security for performance of the contract or
- as advance rent for the immediately following rental period as the rental period is defined in the contract.

If a home requires a resident or prospective resident to make an advance payment for security or as advance rent,

- 1) The home shall promptly deposit the money in a designated trust account in a financial institution, separate from other money and property of the home.
- 2) The home may not represent on a financial statement that the advance payment money is part of the assets of the home.
- 3) The advance payment money may be used only for the account of the resident.
- 4) The home shall notify the resident or the resident's representative, in writing, of the name and address of the depository in which the advance payment money is being held.
- 5) The home shall provide to the resident or the resident's representative the terms and conditions under which the advance payment money may be withheld by the home.

# AS 47.33.210 Residential Service Contracts (b) (6) & AS 47.33.3030 Advanced Payments (b)

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The residential services contract must set out the home's policy for refund of advance payments in the event of termination of the contract or death of the resident.

An assisted living home shall establish a written policy for the refund of unused advance payments in the event of termination of a residential services contract or death of a resident. The policy must provide that a resident is entitled to a prorated refund of the unused portion of an advance payment, less reasonable charges for damages to the home resulting from other than normal use.

# AS 47.33.210 Residential Service Contracts (b) (5) & AS 47.33.3030 Advanced Payments (b) 7 AAC 75.330 Refund of Rent (a)

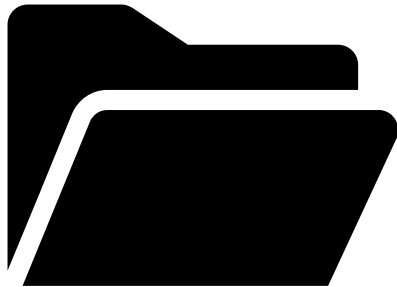
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A home's written policy for the refund of advance payments, established in compliance with AS 47.33.030 must conform to the following rules:

- 1) If a resident terminates a residential services contract by giving notice at least one rental period before the termination is to be effective, the home shall refund an advance rent payment on a prorate basis.
- 2) If a resident terminates the contract by giving notice less than one rental period before the termination is to be effective, the home need not refund a payment applicable to the current rental period, but shall prorate the refund of an advance rent payment for a subsequent period; if the home executes a new residential services contract with a new resident in place of the terminating resident, to become effective during the current rental period, the home shall refund the prorate amount of rent applicable to the days of the new contract.
- 3) If a resident dies, the home need not refund a payment applicable to the current rental period but shall prorate the refund of an advance rent payment for a subsequent period; if the home executes a new residential services contract with a new resident in place of the deceased resident, to become effective during the current rental period, the home shall refund the prorate amount of rent applicable to the days of the new contract.
- 4) If a home terminates a residential services contract, in accordance with AS 47.33.360, it shall refund an advance rent payment on a prorate basis.

# AS 47.33.070 Resident File (a)(5)

An assisted living home must maintain a copy of the residential services contract between the home and the resident in the resident's file.



## Residential Licensing Expectations:

- The resident's contract should be readily available for review at inspections or during investigations.

# AS 47.33.090 Rate Increases

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An assisted living home may not increase the rates charged for services provided by the home unless the home notifies each resident or the resident's representative of the increase at least 30 days before the increase takes effect.

## Residential Licensing Expectations:

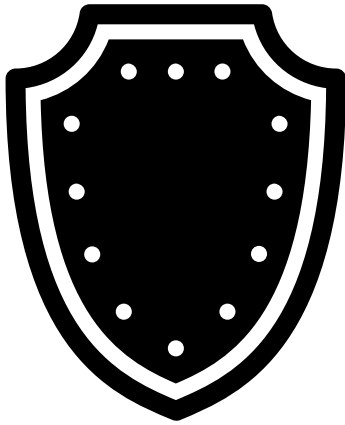
- This notification must be in writing and a copy must also be provided to the Department through Centralized intake.
- Licensing statues or regulations do not indicate an amount the Home may or may not charge.



# AS 47.33.350

## Retaliation against home Resident.

It is presumed a termination of a residential service contract is retaliatory if a home terminates a contract within 60 days after a resident.



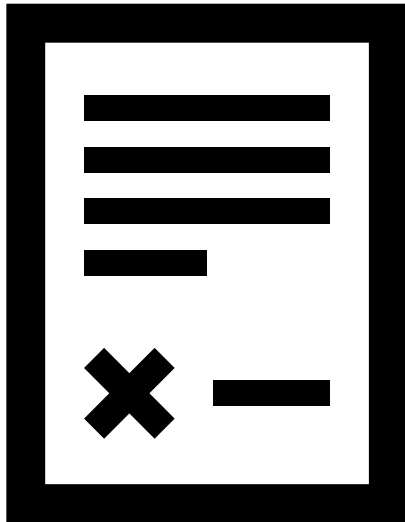
- Exercises a right.
- Appears as a witness, or refuses to appear as a witness, in an adjudicatory proceeding regarding the home.
- Files a civil action alleging violations by the home.
- Claims a violation has occurred to a state or federal agency that has jurisdiction over the home or its employees.

Contact your licensing specialist in the event you need to give notice and are concerned it may be retaliatory. Especially in a case if a resident stops paying their rent.



# Placement Agreements

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Home's that provide family habilitation services will often have a placement agreement with an agency.

The agreement that the home has with the agency is not considered a residential service contract.

A separate contract will need to be created and provided to the resident and their representative if any.

# Sample Form

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The Department provides sample forms including :

- Depository of Advanced Payment
- Notice of Home Closure
- Notice of Increased Charges
- Notice of Involuntary Termination of Contract
- Refund of Unused Advanced Payment
- Residential Service Contract

Homes may use these forms to guide and create their own forms to meet the statutory and regulatory requirements.

Website:

<https://health.alaska.gov/dhcs/Pages/cl/ALH%27s/Provider-Resources.aspx>

# Questions or Comments

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- If you have any additional questions or concerns, please follow-up with your assigned licensing specialist and/or their supervisor.
- Questions and concerns can also be sent to [ALH.Newhome@alaska.gov](mailto:ALH.Newhome@alaska.gov).

