Landlord-Tenant Law

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Coalition on Homelessness and Housing in Ohio
About The Presenter

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Coalition on Homelessness and Housing in Ohio (COHHIO)
• www.cohhio.org
• Mission of ending homelessness and promoting affordable housing through public policy advocacy, training and technical assistance, research, hotline advice, and public education in Ohio
Overview

Training will provide a general overview of:

• Ohio’s Landlord Tenant Law (Ohio Revised Code or ORC 5321)

• Review of ORC 1923 – Eviction Law
Part 1: Introduction to Terms and Duties

• General Applicability of ORC 5321
• Basic Tenant, Landlord, Residential Premises definitions
• Rental Agreement definition and requirements
• Selected Duties and Rights of Landlords and Tenants
Agenda Details

Part 2: Understanding Common Issues

- Entry and Right of Access
- Repairs and Remedies
- Fees and Deposits
- Termination and Eviction
Part 1: Introduction to Terms, Definitions, & Duties
Important Principles

- Landlord-Tenant Relationship is a business relationship
Tenant

• A person entitled under a **rental agreement** to the use and occupancy of residential premises to the exclusion of others, including landlords

• Some circumstances can be tricky:
  • Guest/visitor or unauthorized tenant?
  • Unclear rental agreement (ambiguity/conflicting terms create problems for both landlord & tenant)
  • **AMBIGUITY IS CONSTRUED AGAINST THE DRAFTER**

A lease/rental agreement is a binding legal contract. Both landlords and tenants are bound by the terms of the agreement.
Landlord

• The owner, lessor, or sublessor of residential premises, OR
• The agent of the owner… or any person authorized by the owner… to manage the premises or to receive rent from a tenant under a rental agreement
Residential Premises

• A dwelling unit for residential use and occupancy and the structure: RC 5321.01(C)
  • Does **not** include: prisons, jails, hospitals, tourist homes, hotels, motels, boarding schools, most shelters, and many other structures/places

• RC 5321.01(C) Contains many other exclusions: (c)(1)-(10)

• There is no specific exemption for recovery housing
Occupancy Definitions: ORC 5321.01(C)(9)

"Residential premises" does not include any of the following:

- Occupancy in a facility licensed as an SRO facility that is either:
  1. Owned or operated by an organization that is exempt from taxation under section 501(c)(3), OR
  2. By an entity or group of entities, and if either of the following applies:
     a) The occupancy is for a period of less than 60 days, OR
     b) Program operated by the (SRO) facility to provide either of the following:
        • Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of . . . persons suffering from substance abuse;
        • Shelter for juvenile runaways, victims of domestic violence, or homeless persons.
Occupancy Definitions: ORC 5321.01(C)(9)

• So… what services are licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of persons suffering from substance abuse?

• ??????????????????????????????????????????????????????????????????????????
Occupancy Definitions:
ORC 5321.01(C)(10)

"Residential premises" does not include any of the following:

Emergency shelters:
1. Operated by organizations under section 501(c)(3) for:
   a) Persons whose circumstances indicate a transient occupancy, including:
      I. homeless people,
      II. victims of domestic violence,
      III. and juvenile runaways.
Rental Agreement

• “Rental Agreement” means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

• Put agreement in writing to avoid disagreements over what was said/included in the rental agreement.
Types of Rental Agreements

• **Month-to-Month**
  - Benefits: flexibility
  - Detriments: No guarantee beyond 30 days for either party
  - May also be weekly, bi-weekly, etc.

• **Lease for a term**
  - Guarantee of premises for specific term (1 yr., typically)
  - Benefits: lock in rent amount & time: stability
  - Detriment: no flexibility if either party wants to end agreement & the other side does not
Prohibited in Rental Agreements

• Prohibited Terms — ORC 5321.13
  • Confess Judgment
    • Tenant gives up the right to a defense against a claim
  • Tenant required to pay landlord’s attorney’s fees no matter the outcome of a legal dispute
• Shifting landlord duties to the tenant
• Have tenant indemnify landlord from liability

• Prohibited Actions — ORC 5321.15
  • No self-help evictions (lockouts) or utility shut-offs
Rental Agreement Term That is “Bad”

- Unconscionable terms—ORC 5321.14
  - Unconscionable = unfair/illegal
  - A court may rule to refuse to enforce a rental agreement
    OR (more likely)
  - A court may elect to enforce the rental agreement without the unconscionable clause
  - There is no definition of “unconscionable”
  - Often used to attack unreasonable late fees (but reasonable late fees are OK)
Duties of Landlords & Tenants

**Landlord Duties (5321.04)**
- Make all repairs to put and keep premises in a fit and habitable condition
- Keep all electrical, plumbing, heating, and ventilation systems in good working order
- Maintain all appliances and equipment supplied or required to be supplied by him/her (no duty to supply appliances)

**Tenant Duties (5321.05)**
- Keep the premises safe & sanitary
- Use electrical and plumbing fixtures properly
- Keep the plumbing fixtures as clean as their condition permits
- Maintain the appliances supplied by the landlord in good working order
Duties of Landlords & Tenants

**Landlord Duties (5321.04)**

- Provide garbage cans and arrange for trash removal, if the landlord owns four or more residential units in the same building
- Comply with building, housing, health and safety codes
- Give at least 24 hours notice, unless it is an emergency, before entering a tenant’s unit and enter only at reasonable times and in a reasonable manner

**Tenant Duties (5321.05)**

- Dispose of rubbish properly
- Comply with housing, health, and safety codes that apply to tenants
- Refrain, and forbid household members or visitors, from damaging, or removing any fixture, appliance, or other part of the premises
- Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given
Duties of Landlords & Tenants

**Landlord Duties**

- Evict the tenant when the landlord has “actual knowledge” of drug activity by the tenant, a member of the tenant’s household or a guest of the tenant occurring in or otherwise connected with the tenant’s premises.

**Tenant Duties**

- Comply with state or municipal drug Laws in connection with the premises and require household members and guests to do likewise.
Duties of Landlord

• Supply running water, reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up
Duties of Tenant

- Refrain from damaging the premises and keep guests from damaging
- Refrain from disturbing any neighbors and require guests to do the same
Retaliation vs. Discrimination

- These terms are often conflated, but have different legal meanings
- **Retaliation**: 3 ways in Ohio’s statute for a landlord to commit retaliation:
  - Landlord increases rent, decreases services, or threatens to bring/actually brings eviction action for these specific reasons:
    1. Tenant complained to government agency about code violation
    2. Tenant complained to landlord that landlord violated their legal duties
    3. Tenant organized with other tenants to negotiate/deal with landlord about lease terms
Retaliation vs. Discrimination

- **Discrimination**: Fair Housing Act (FHA) issue
  - FHA prohibits discrimination in the rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes (race, skin color, familial status, religion, sex/gender, national origin, disability; Ohio state law adds ancestry & military status to list)
  - Some fair housing requirements will apply to all housing providers in one way or another – can’t escape it
    - Even if the Landlord-Tenant law doesn’t apply to a housing provider, the **FHA** almost certainly will
    - Even if the FHA doesn’t apply to a housing provider, the **Americans with Disabilities Act** (ADA) will
Reasonable Accommodations

• Remember that **substance abuse** is a **disability** under the FHA
  • Disabled = current alcohol users and former users of illegal controlled substances
  • This means tenants can ask for reasonable accommodations (RAs)
  • RA to get a 2\(^{nd}\) chance (or more)
• **Under FHA or ADA, cannot have a blanket ban on pets without allowing reasonable accommodations**
  • Assistance animals ≠ pets
Reasonable Accommodations

- Other types of RA requests:
  - Referral to a treatment provider to get help
  - Referral to a crisis center
  - Referral to another recovery provider
- An administrative due process system, laid out in writing, that includes a meeting is an ideal way to facilitate such requests/actions
- Ohio law does not require that a landlord have administrative due process before going to court to evict
Landlord-Tenant Law & Rooming Houses

• “Rooming House” is not defined by state law
• Local housing codes may provide a definition.
• There may be specifics about regulatory schemes.
  • Cleveland has no specific regulatory schemes that govern rooming/boarding housing.
- **4501.32 - Rooming house.** "Rooming house" means and includes every dwelling, other than hotels and motels, kept, used or held out to be a place where sleeping or lodging rooms are offered for pay to three (3) or more persons and shall include but not be limited to uses defined in the Zoning Code at Chapter C.C. 3303 as "apartment hotel," "boarding home," "residential care facility," "rooming house" and "shared living facility." (Ord. 2856-91.)

- **4501.33 - Rooming unit.** "Rooming unit" means any room or group of rooms in a rooming house which are used or intended to be used for living and sleeping, but not for cooking and eating purposes. (Ord. 356-75.)

- **4561.01 - Compliance required.** No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of every section of this Housing Code except the provisions of Sections 4521.02, 4521.03, 4521.06; 4521.07; 4551.01(b), (g) and (1); and 4551.02(b) and (g). (Ord. 1254-75.)

- **4561.02 - License required.** No person shall operate a rooming house unless he holds a valid rooming house license issued by the Division in the name of the operator and for the specific rooming house. The operator shall apply to the Division for such license, which shall be issued on condition that the applicable provisions of this Housing Code and any rules and regulations adopted pursuant thereto are complied with. Every license shall expire at the end of one year following its date of issuance and in subsequent years on the date of expiration unless sooner suspended or revoked. The fee for such license, as prescribed in the fee schedule, and license issuance are subject to C.C. 4561.05 and 4561.051. (Ord. 2672-85.)

- In Title 45-Housing Code in the Columbus Code of Ordinances, there are even more specific rules about bathroom facilities, bedding, floor space requirements, stairways, fire extinguishers, etc.
Rooming Houses, Cont.

Cincinnati:

-1401-01-R14. - Rooming House. "Rooming house" means a building containing three or more rooming units not offering nursing or dietary care, therapy or counseling for its occupants. (See § 1401-01-R15. Rooming Unit) (Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

-1401-01-R15. - Rooming Unit. "Rooming unit" means a room available for rental occupancy for periods of seven days or longer but not equipped with a kitchen facility so as to constitute a dwelling unit. (Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

-Sec. 855-1-R1. - Rooming House. "Rooming house" shall mean a dwelling occupied by three or more roomers or in which three or more rooms are kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for pay; provided that "hotels" as herein defined, "dwelling units" as defined in Title XI of this code and any dwelling in which one or two rooms within individual dwelling-units are let out by the occupants of the units shall not be construed to be rooming houses for purposes of this chapter. (C.O. 740-1; renumbered to C.M.C. 855-1-R1, eff. Jan. 1, 1972)

-Sec. 855-3. - License Required. No person shall operate or permit to be operated a rooming house without having a license or a temporary certificate to do so as hereinafter provided. (C.O. 740-3; renumbered to C.M.C. 855-3, eff. Jan. 1, 1972)
Akron:

-" Rooming house ." Any dwelling, or that part of any dwelling, containing one or more rooming units, including hotels, in which space is let by the owner or operator to three or more persons who are not husband, wife, son, daughter, mother, father, sister, or brother of the owner or operator. **150.01**

-" Rooming unit ." Any room or group of rooms forming a single habitable unit used, intended to be used or designed to be used for living and sleeping but not for cooking or eating purposes. **150.01**

Title 15-Land Usage of the Akron Code of Ordinances Section **150.13** has a laundry list of requirements about the operation of rooming houses.

- **150.30** - Registration required.

  A. An owner or operator shall register, on a registration form that the Department of Neighborhood Assistance shall provide, all rental units that the owner owns, or that the operator operates, no later than January 31 of each year, and upon the completion of transfer of title to a premises or structure with a rental unit.

  G. A registration fee per owner or operator shall be imposed as follows: 1. Fifteen dollars ($15) per unit, with a maximum fee of one thousand five hundred dollars ($1,500);
Rooming Houses, Cont.

Toledo:

-Rooming House. A dwelling containing three or more rooming units, in which space is let by the owner or operator for living or sleeping, but not open to the public or overnight guests. Meals may or may not be provided. Typical uses include rooming and boarding houses. Ord. 353-18. Passed 8-28-18. Chapter 1116.0250(C). See also Chapter 1761 of the Health Code.

-Chapter 1761.01. General requirements. No person shall operate a rooming house, or shall occupy or let to another for occupancy any dormitory room and/or rooming unit in any rooming house, which is not in compliance with the provisions of every section of this Housing Code...

-Chapter 1761.02. Permits. (a) No person shall operate a rooming house unless he holds a valid rooming house permit issued by the City Department of Health and Environment in the name of the operator and for the specific dwelling or dwelling unit.


-Lead paint is prohibited in rooming houses. Regulation No. 2-72, Appendix I, Section III.
Rooming Houses, Cont.

• Elyria:
  • …the person who operates a licensed rooming house shall be considered in business, whether or not the gross income equals two hundred and fifty dollars ($250.00) or more per month. CHAPTER 191 Earned Income Tax For Municipal Tax Years Beginning on or Before December 31, 2015. 191.02(t)
  • 1394.03 INSTALLATIONS IN SLEEPING ROOMS OF DORMITORIES AND ROOMING HOUSES.
    • Smoke detectors shall be installed in each sleeping room of a dormitory and in each sleeping room of a residential building which is used as a rooming and/or boarding house or as a dormitory. (Ord. 84-116. Passed 5-21-84.)
Real Life Example: William Brady Organization

- Columbus code inspectors visited 9 houses run by the William Brady Organization and continued to find problems that the operator was previously told to fix, including broken drywall, missing kitchen tiles, peeling paint, broken windows, dead roaches and rodent droppings.

- “The Brady group has 30 days to take care of the problems before another re-inspection,” said Dana Rose, the city’s code-enforcement administrator. “The city won’t issue the 7 remaining licenses until the houses pass code.”

- The founders of the Brady group have been in the housing business since 2009, serving more than 3,000 people. But the group had never checked state and city codes setting minimum requirements and safety standards.
Real Life Example: Summer Rays in Reynoldsburg

• The Ohio attorney general’s office obtained a **restraining order** in July, 2018 against the operators of a local sober-housing charity, saying the founder exploited residents financially, abused them emotionally and verbally and engaged in activity “wildly inappropriate” for a recovery program.

• Franklin County Common Pleas Judge David C. Young also granted the attorney general’s request for a **court-appointed receiver to take control of Summer Rays’ assets and properties**, including 25 houses where 100 or more people live as they try to maintain sobriety from drugs and alcohol.

• The state conducted a **multyear investigation** of Summer Rays, headed for the past 10 years by Reynoldsburg resident Chuck Kirk, 46, his wife and other family members. Kirk also controls Reynoldsburg Revolve Church, the Rev Cafe and a handful of other businesses that, investigators say, depended on Summer Rays residents for labor or as customers. Some residents joked that Summer Rays had “a cult-like environment,” with Kirk wielding absolute authority.

• Court documents describe multiple instances of intimidation, including sexual harassment. They say Kirk loudly called one resident a “hillbilly whore” in a public restaurant and threw chairs, cans, water bottles and even hurled “a plastic cup filled with urine, from a drug test, at a Summer Rays resident.”

• Court documents say houses were often overcrowded, with some people living in partly renovated garages. At one point, Kirk had residents in a duplex that lacked heat, air conditioning, running water and, at times, electricity.
Part 1 Summary

• Definitions: rental agreement, landlord, tenant, residential premises
• Types of rental agreements and requirements
• Identify and distinguish duties of landlord and tenant
• Retaliation vs. Discrimination
• Reasonable Accommodations
• Rooming houses
Part 2: Understanding Common Issues
Entry & Access

**Landlord 5321.04**

Give at least 24 hours notice, unless it is an emergency, before entering a tenant’s unit and enter only at reasonable times and in a reasonable manner.

**Tenant 5321.05**

Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given.

- Entry permitted for: repairs, inspections, show the unit, etc.
- Emergency ≠ smelling drugs or not answering when you knock.
What is “reasonable” entry?

• Reasonable not defined in ORC 5321

• General Principles:
  • 24 hours notice is presumed reasonable by statute
  • NOT in statutory language, but likely reasonable:
    • Knock before entering
    • Announce presence before opening door/crossing the threshold
    • Timing can be negotiated
    • Purpose and time of day must also be reasonable
Repairs & Remedies: 5321.07

If a tenant reasonably believes that a landlord has failed to fulfill an obligation under the law or lease:

1. Give **written notice** (emails & texts count) to the landlord (person or place where rent is normally paid). **Advice we give tenants:** date, sign, & keep a copy for their own records.

2. After LL receives notice, wait reasonable time, considering the severity of the condition and time necessary to remedy it, not more than 30 days.
3. **Tenant may take legal action**
   - Escrow with local Clerk of Courts (pay rent to court at time rent is due)
   - Apply to the court for an order to compel the repairs (find an attorney)
   - Terminate the rental agreement

**Exceptions:** If landlord gives written notices that s/he owns 3 or fewer units, a tenant may not take legal action; also N/A to student housing
General Escrow Requirements

• Have to be current in rent
• Have to deposit your **full amount of rent** with local Clerk of Courts **at time rent is due**
  • Court may have specific procedures or requirements
• Can’t deposit in “bad faith”
• If LL (Owner AND Agent) doesn’t disclose his/her name and address to the tenant, then they give up the right to a notice before the tenant takes legal action
Tenant Failure to Maintain Property: ORC 5312.11

- Notice to cure from Landlord to Tenant to cure problem because Tenant not fulfilling duties
- Tenant’s breach is “materially affecting health and safety”
- Must give 30 days to cure
- If Tenant cures, then no grounds to pursue in court
- Anomaly in the law
Rent Amount, Fees & Deposits

• ORC 5321 does not cover:
  – Rent Increases (amount or frequency)
  – Late fees specifically (no defined limit)
  – Application Fees
  – Deposit to “hold” the unit (NOT a security deposit)

• ORC 5321 only covers:
  – Security Deposits (no limit on amount)
  – Late fees cannot be “unconscionable”
Security Deposits: 5321.16

• NO LIMIT on amount
  • If amount is more than one month’s rent, 5% annual interest on surplus

• LL’s have 30 days to return it after tenant leaves
  • Tenant must give written notice of forwarding address
  • LL must itemize deductions and charges
  • Tenant can sue for double amount believed to be wrongfully withheld if not returned
  • No penalty for landlord’s failure to comply with notice requirement
## Termination vs. Eviction

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<th>Termination</th>
<th>Eviction</th>
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<td><strong>Termination</strong></td>
<td><strong>Eviction</strong></td>
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<tr>
<td><strong>ORC 5321.17</strong></td>
<td><strong>ORC Chapter 1923</strong></td>
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<td>• 30 day notice for month-to-month</td>
<td>• A landlord can bring an eviction action:</td>
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<td>• Runs with rent cycle</td>
<td>• Tenant failed to pay rent on time</td>
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<td>• No reason required</td>
<td>• Stayed in the unit after the termination or expiration of rental agreement (holdover)</td>
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<td>• Tenant breaches lease or law</td>
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Termination

• Regardless of Landlord-Tenant law application, consider having an administrative due process component to termination

• Similar to HUD programs:
  • State grounds clearly
  • Right to a meeting
  • Right to a representative
  • Right to a written decision by someone not the original decision maker and not subordinate
Eviction Process

1. Termination event
2. Notice to leave premises
3. Complaint
4. Hearing
Eviction Notice 1923.04

• Serve Notice to Vacate (3 Day Notice)
  • Magic language: "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."

• Must wait 3 days to file

• Magic language must be “conspicuous”

• Counting: Include Saturdays, Sundays, Holidays???
NOTICE TO LEAVE PREMISES
Ohio Rev. Code 1923.04

Westerville, OH 43081
From: Champion Property Management / Emerson Park
Champion Property Management / Emerson Park wishes you to leave the following described premises now in your occupation, situated in the City of Westerville, County of Franklin, and State of Ohio, and described as follows:

Westerville, OH 43081
Garage/Storage Unit # ______

Together with the lot of land which said premises is situated.

Total Amount Due: $1,173.00

Your compliance with this notice on or before the 20th day of July, 2019 will prevent any legal measure being taken by Champion Property Management / Emerson Park to obtain possession.

Only certified check, cashier's check, or money order will be accepted for your rental payment including all late fees.

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.

I hereby certify that the following notice was served upon:

(A) ______ the above occupants; or
(B) X ______ the above premises; or
(C) ______ upon a responsible adult present at the premises

on 7/5/2019.

Service made by: [Signature]
Management Representative
Champion Property Management
DBA Emerson Park
Eviction Procedure Quirks

- Summary proceeding
  - Special service
    - “Nail & mail”
  - Hearing scheduled 16-21 days after filing (Hamilton Cty.); 14 days in Franklin Cty.
- Split claims
  - Money & Possession
General Eviction Procedures

• Landlord or attorney files an eviction action at the local court where property is located

• The local Court will schedule a hearing and send a summons to the tenant
  • **First Cause** – Right to the Possession of the Property
  • **Second Cause** – Recovery of Damages
  • Often NOT done at same time
  • First Cause is an “expedited proceeding”

• If landlord gets favorable decision, tenant has to move
  • Landlord can arrange to have tenant’s belongings removed by executing (set out) on the writ of restitution
Local Practice
(Hamilton & Franklin County)

- Evictions heard each day at 9:00 AM
- Heard by Magistrates
- If tenant loses, a 7-Day Writ issues (Hamilton) (5 days in Franklin Cty.)
- Can be less, if extraordinary circumstances
- 20-70 cases per morning in Hamilton, (typically more in Franklin Cty.)
Possible Eviction Defenses

- Landlord failed to give the tenant a 3 Day Notice before filing an eviction action in court or did not wait 3 days
- The Notice didn’t include language required by law
- 3 Day Notice served during “grace period”
- Landlord accepted “current” rent after giving 3 Day Notice
- Landlord routinely accepted late rent (pattern & practice)
- Tenant offered rent in full on time, but landlord refused
- Landlord (agent) is not the owner, and attorney didn’t file
- Retaliation
- Discrimination
- Unconscionable lease provision

Self-Help Eviction: ORC 5312.15

- Any action of landlord outside of court approval to remove tenant, or:
  - Shut off utilities
  - Change the locks
  - Seize the tenant’s possessions

**Consequences:** Landlords who violate the prohibition on self help evictions and utility shut-offs are liable for damages and attorney fees and may be subject to injunctive relief.
Part 2 Summary

• Common Issues:
  • Entry and Access
  • Repairs and Remedy
  • Security Deposits and Fees
  • Termination and Eviction
  • Eviction procedure and rights
Resources

• **Rental Rights Questions: COHHIO**
  • rentinfo@cohhio.org
  • 888-485-7999 (housing information line)
    • Information available for individuals and organizations

• **Eviction Court Mediation (where available)**

• **Local Code Enforcement**

• **County Health Department**

• **Legal Aid**
How to Stay in Touch

Joe Maskovyak, COHHIO
joemaskovyak@cohhio.org
Direct: 614-280-1984 x133
Toll Free: 888-485-7999 (Housing Information Line)
or Email: rentinfo@cohhio.org

Thank you!