

Applications to the Court of Protection in relation to tenancy agreements

Introduction

The Association of Public Authority Deputies (APAD), and a number of other court users, have asked the court for guidance on how to make applications in relation to signing or terminating tenancy agreements on behalf of adults who lack the mental capacity to understand or sign the agreement themselves. The situation arises mainly where adults with learning disabilities are moved from hospital or care home settings into supported living arrangements in the community, that allow greater autonomy and independent decision making. Many of the adults will have the capacity to make certain decisions, such as dealing with social security benefit payments, but will lack the capacity deal with the tenancy arrangement.

The policy of assessing clients to support a move to supported living could affect several hundred adults per year across England and Wales. This guidance has been drawn up with the approval of the Senior Judge of the Court of Protection, and sets out: the circumstances when it is necessary to make an application; the court's requirements for such applications; and puts in place streamlined procedures for receiving applications in bulk, thereby simplifying some parts of the court procedure.

Is it necessary to apply to court for authority to sign or terminate the tenancy agreement?

If a person lacks the mental capacity to sign the tenancy agreement or terminate it, then anyone intending to sign on the person's behalf can only do so if they are authorised to do so by the Court of Protection (unless the person had capacity to make a power of attorney and has done so). Section 5 of the Mental Capacity Act 2005 makes provision for carers and health and social care professionals to make certain decisions on behalf of another in relation to care and treatment, without the need to obtain any formal authority to act. However, this does not cover signing legal documents, such as tenancy agreements, or any other decisions in relation to the person's property and affairs. This means that the court's authority **must** be sought in relation to signing or terminating a tenancy agreement.

In some cases, the landlord of the property that is the subject of the tenancy may not require a signature on the agreement. Although this would allow the adult to move without having to wait for formal authorisation, the court discourages such practice, as it could make the tenancy agreement unenforceable and put the adult's living arrangements at risk.

There may be some cases where moves have already taken place without the correct formalities having been followed. Where this is the case, the procedure outlined here may be used to ratify arrangements that are already in place.

Can a deputy sign or terminate the tenancy agreement?

If an adult service user already has a deputy appointed to make decisions on their behalf, then the deputy can terminate or enter into a tenancy agreement without further authorisation from the court. Please note, however that deputies acting under an old style short order or receivership order made before the Mental Capacity Act

came into force, may not have sufficient authority to sign the agreement, and it may be necessary to apply for 'reappointment' with the full powers of a deputy.

Does a deputy need to be appointed in all cases?

No, if the sole purpose of the application is to sign or terminate the tenancy, then the application should be for an order that specifically deals with the tenancy matter (see how to make an application, below). If, however, the adult lacks capacity to manage other aspects of their property and affairs and they have assets and income other than social security benefits then it will usually be necessary to appoint a deputy to deal with all these decisions.

Before making an application

It would assist the court in dealing with applications if you would contact us by telephone or email before making an application. This is so we can arrange to receive your application and to ensure it is dealt with in accordance with the procedure set out below.

If you do not contact us beforehand, there is a risk that applications will be rejected as incomplete and may be returned.

See contacts below.

How to make an application

The court is prepared to deal with all of the adults required to sign the tenancy agreement(s) in a single bulk application. This is on the understanding that the only order required from the court relates to the tenancy agreement and no further directions, for example the appointment of a deputy, are necessary.

The court will require:

- A single COP1 Application form setting out the order or declaration required with a list of all the adults required to sign the agreement annexed;
- A COP3 Assessment of capacity for each adult. The assessment should deal specifically with the adult's capacity to sign or terminate the agreement;
- A COP24 Witness statement setting out the circumstances behind the moves and confirming that a best interests assessment has been carried out, including consultation with close family members, or people in close contact with the person, where applicable.
- An application fee.

The application form should request the court to make a single order or declaration that it is in all the adult service users' best interests for the tenancy arrangement to be signed or terminated on their behalf.

The procedure above can also be used for applications relating to individuals.

How will the court deal with the application?

When the court issues the application, the applicant will notify each adult personally using form COP14 and provide evidence that they have done on form COP20A. Once notified, the person will have 21 days to object or respond to the application.

If the court receives an objection to the application it will deal with it as a discrete issue, in accordance with the usual procedure.

Once the 21 day time limit expires, the court will issue a single order that deals with the tenancy matter for all the service users.

Will the court remit the fee?

No. The court is only charging a single fee for an application that relates to more than one person and will not remit fees in relation to bulk applications. The applicant is responsible for paying the fee, which must accompany the application.

If the application relates to a single individual only, then the usual policy on fee remissions and exemption will apply.

Contacts

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