

Applications to the Court of Protection in relation to tenancy agreements

Introduction

The Association of Public Authority Deputies (APAD), and other court users have asked the court to issue guidance about 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. Often this is 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.

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 may be necessary to make an application, and puts in place streamlined procedures for receiving applications relating to more than one person, thereby simplifying some parts of the court procedure.

When is it necessary to apply to the Court of Protection?

If a person lacks the mental capacity to make his or her own informed decision about whether or not to accept a tenancy offer, then an appropriate person can make the decision through the best interest process outlined in the Mental Capacity Act 2005.

Alternatively, if there is a registered enduring or lasting power of attorney in place; or a deputy for property and affairs has already been appointed, then the attorney or deputy would usually make that decision (see below).

Although the Mental Capacity Act 2005 enables the making of certain decisions without the need to obtain any formal authority to act, it does not extend to **signing** legal documents, such as tenancy agreements. Someone can only sign a tenancy agreement on the person's behalf if they are:

- An attorney under a registered lasting power of attorney (LPA) or enduring power of attorney (EPA);
- A deputy appointed by the Court of Protection; or
- Someone else authorised to sign by the Court of Protection.

In some circumstances, landlords may be willing to accept unsigned tenancies, but this guidance applies to the situation where the landlord wants the tenancy to be signed. Even if the landlord will accept an unsigned agreement, it would also be appropriate to make an application where there is a dispute or if it is not clear whether the tenancy offer is in the person's best interests.

Can a deputy or attorney sign or terminate the tenancy agreement?

If the person has a registered attorney under an EPA or LPA, or has a deputy appointed to make decisions on their behalf, then the deputy or attorney 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.

What if the person lacking capacity is under 18 years of age?

Section 18(3) Mental Capacity Act enables the court to make decisions about a child's property or finances (or appoint a deputy to make these decisions) if the child lacks capacity to make such decisions and is likely to still lack capacity to make financial decisions when they reach the age of 18.

These provisions do not extend to tenancies because a person under 18 cannot legally enter into a contract, because in law, a child is deemed to lack capacity because of their age. In addition, a tenancy is a legal estate and a child cannot hold a legal estate.

As the tenant is under 18 and cannot legally sign a contract, the Court of Protection cannot appoint a deputy or authorise someone else to sign the agreement on behalf of the child. This is because the court could not authorise a transaction that would not be legal, even if the person had mental capacity. The only option here would be for someone with parental responsibility to sign, although this would have the effect of making the parent the tenant.

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 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 for **each** person 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.
- A covering letter clearly stating that the applications relates to tenancy agreements in respect of more than one person

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 adapted 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.

Further help and information

If you need any further help or information about making an application, please contact:

 courtofprotectionenquiries@hmcts.gsi.gov.uk

 0300 456 4600

Please note that while court staff can provide guidance about making an application, they cannot give legal advice. We recommend that you seek independent legal advice where appropriate.