

PRACTICE DIRECTION – CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

THIS PRACTICE DIRECTION SUPPLEMENTS PART 73

SECTION I – CHARGING ORDERS

Application notice – rule 73.3

- 1.1 An application for a charging order must be made by filing an application notice in Practice Form N379 if the application relates to land, or N380 if the application relates to securities.
- 1.2 The application notice must contain the following information –
 - (1) the name and address of the judgment debtor;
 - (2) details of the judgment or order sought to be enforced;
 - (3) the amount of money remaining due under the judgment or order;
 - (4) if the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
 - (5) if the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and (if known) their addresses;
 - (6) identification of the asset or assets which it is intended to charge;
 - (7) details of the judgment debtor's interest in the asset; and
 - (8) the names and addresses of the persons on whom an interim charging order must be served under rule 73.5(1).
- 1.3 A judgment creditor may apply in a single application notice for charging orders over more than one asset, but if the court makes interim charging orders over more than one asset, it will draw up a separate order relating to each asset.

High Court and county court jurisdiction

2. The jurisdiction of the High Court and the county court to make charging orders is set out in section 1(2) of the 1979 Act.

Transfer

3. The court may, on an application by a judgment debtor who wishes to oppose an application for a charging order, transfer it to the court for the district where the judgment debtor resides or carries on business, or to another court.

Enforcement of charging orders by sale – rule 73.10

- 4.1 A county court has jurisdiction to determine a claim under rule 73.10 for the enforcement of a charging order if the amount owing under the charge does not exceed the county court limit.
- 4.2 A claim in the High Court for an order for sale of land to enforce a charging order must be started in Chancery Chambers at the Royal Courts of Justice, or a Chancery district registry.
(There are Chancery district registries at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle upon Tyne and Preston.)
- 4.3 The written evidence in support of a claim under rule 73.10 must –
 - (1) identify the charging order and the property sought to be sold;
 - (2) state the amount in respect of which the charge was imposed and the amount due at the date of issue of the claim;
 - (3) verify, so far as known, the debtor's title to the property charged;
 - (4) state, so far as is known –
 - (a) the names and addresses of any other creditors who have a prior charge or other security over the property; and
 - (b) the amount owed to each such creditor; and
 - (5) give an estimate of the price which would be obtained on sale of the property.
- 4.4 A sample form of order for sale is set out in Appendix A to this practice direction for guidance. This is not a prescribed form of order and it may be adapted or varied by the court to meet the requirements of individual cases.
- 4.5 Rule 73.10 does not apply where a judgment creditor seeks an order for sale of property owned by more than one person, to enforce a charging order over the interest in the property of one (or of some but not all) of the co-owners. In that situation the judgment creditor may instead be entitled to apply for an order for sale under section 14 of the Trusts of Land and Appointment of Trustees Act 1996.

SECTION II – STOP NOTICES

5. A sample form of stop notice is set out in Appendix B to this practice direction.

Order for sale following a charging order

In the

Claim No.

Appn. No.

Claimant

Defendant

On the _____ 20 __, _____ sitting at _____

heard _____

The claimant is entitled to an equitable charge upon the defendant's interest in the property _____

[registered at H.M. Land Registry under Title No. _____]

("the property") _____

under a charging order made on the _____

in the _____ in Claim No. _____

and the court orders that

1. The remainder of this order will not take effect if the defendant by 4.00 p.m. on the _____ 20 ____ pays to the claimant the judgment debt of £_____ secured by the charge and his costs to date of this application assessed at £_____, making together £_____ [together _____ with interest at the rate of £_____ per day from the date of this order until payment is received by the claimant].
2. The property shall be sold without further reference to the court at a price not less than £_____, unless that figure is changed by a further order of the court.
3. The [claimant] [claimant's solicitor] will have conduct of the sale.
4. To enable the claimant to carry out the sale, there be created and vested in the claimant pursuant to section 90 of the Law of Property Act 1925 a legal term in the property of [3000 years] [one day less than the remaining period of the term created by the lease under which the defendant holds the property].
5. The defendant must deliver possession of the property to the claimant [on or before the _____ 20 ____] [within [_____] days of this order being served on him].

6. The claimant shall first apply the proceeds of sale of the property –
 - (i) to pay the costs and expenses of effecting the sale; and
 - (ii) to discharge any charges or other securities over the property which have priority over the charging order.
7. Out of the remaining proceeds of sale the claimant shall –
 - (i) retain the amount due to him as stated in paragraph 1; and
 - (ii) pay the balance (if any) [to the Defendant] [to _____] [into court].
8. Either party may apply to the court to vary any of the terms of this order, or for further directions about the sale or the application of the proceeds of sale, or otherwise

Stop Notice

CPR rule 73.17

To *[insert name of person or body to whom the notice is addressed]*

TAKE NOTICE that

[insert name and address]

claims to be beneficially entitled to an interest in the following securities –

[specify the securities, giving the name(s) in which they stand]

This Notice requires you to refrain from –

- (1) registering a transfer of the securities specified above; or
- (2) paying any dividend or interest in respect of the securities *[delete if inappropriate];*

without first giving 14 days' notice in writing to the said *[insert name]* of the above address.