

PRACTICE DIRECTION 73

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, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, 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 the claimant is able to identify –
 - (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.
- (6) if the claim relates to land, give details of every person who to the best of the claimant's knowledge is in possession of the property; and
- (7) if the claim relates to residential property –
 - (a) state whether –
 - (i) a land charge of Class F; or
 - (ii) a notice under section 31(10) of the Family Law Act 1996, or under any provision of an Act which preceded that section, has been registered; and
 - (b) if so, state –
 - (i) on whose behalf the land charge or notice has been registered; and
 - (ii) that the claimant will serve notice of the claim on that person.

4.4 The claimant must take all reasonable steps to obtain the information required by paragraph 4.3(4) before issuing the claim.

4.5 Sample forms of orders for sale are set out in Appendix A to this practice direction for guidance. These are not prescribed forms of order and they may be adapted or varied by the court to meet the requirements of individual cases.

4A.1 A charging order or interim charging order may be made against any property, within the jurisdiction, belonging to a judgment debtor that is a partnership.

4A.2 For the purposes of rule 73.5(1)(a) (service of the interim order), the specified documents must be served on –

- (1) a member of the partnership within the jurisdiction;
- (2) a person authorised by a partner; or
- (3) some other person having the control or management of the partnership business.

4A.3 Where an order requires a partnership to appear before the court, it will be sufficient for a partner to appear before the court.

SECTION II – STOP NOTICES

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

SECTION III – APPLICATIONS FOR ORDERS MADE UNDER SECTION 23 OF THE PARTNERSHIP ACT 1890

- 6.1** This paragraph relates to orders made under section 23 of the Partnership Act 1890 ('Section 23').
- 6.2** The following applications must be made in accordance with Part 23 –
- (1)** an application for an order under Section 23 of the 1890 Act made by a judgment creditor of a partner;
 - (2)** an application for any order by a partner of the judgment debtor in consequence of any application made by the judgment creditor under Section 23.
- 6.3** The powers conferred on a judge by Section 23 may be exercised by –
- (1)** a Master;
 - (2)** the Admiralty Registrar; or
 - (3)** a district judge.
- 6.4** Every application notice filed under this paragraph by a judgment creditor, and every order made following such an application, must be served on the judgment debtor and on any of the other partners that are within the jurisdiction.
- 6.5** Every application notice filed under this paragraph by a partner of a judgment debtor, and every order made following such an application, must be served –
- (1)** on the judgment creditor and the judgment debtor; and
 - (2)** on the other partners of the judgment debtor who are not joined in the application and who are within the jurisdiction.
- 6.6** An application notice or order served under this paragraph on one or more, but not all, of the partners of a partnership shall be deemed to have been served on all the partners of that partnership.

Appendix A

Order for sale following a charging order

(property solely owned by
judgment debtor)

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

Order for sale
Following a charging order
(property owned by judgment
debtor and another person)

In the
Claim No.

Claimant

Defendants

On the 20 , sitting at

heard

The claimant is entitled to an equitable charge upon the first 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 first 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. The court pursuant to section 50 of the Trustee Act 1925 appoints the [claimant] [claimant's solicitor] to convey the property.
5. The defendants 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. The claimant shall then divide the remaining proceeds of sale into two equal shares and ñ

- (i) pay one equal share to the second defendant; and
- (ii) out of the other equal share, retain the amount due to him as stated in paragraph 1, and pay the balance (if any) [to the first defendant] [to] [into court].

8. Any 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.

Appendix B

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.