



## COLLECTION &amp; ENFORCEMENT

# Secured debt

**Charging Orders: the pros, the cons and the obstacles.**

When a debtor owes money to a creditor, there are different routes that a creditor can take to recover the debt that is owed to them and these are available to Local Authorities (LAs) as well. It is important that a creditor properly considers the most appropriate route to recover the money, and this will depend on the value of the debt and the financial position of the debtor. If the debtor owns a property, a really useful debt recovery tool is to apply for a charging order on the property to secure the debt, although the creditor must have obtained a court order or judgment against the debtor requiring them to pay a specified sum of money. A benefit for LAs is that liability orders for unpaid Council Tax and NNDR is classed as a judgment for the purpose of obtaining a charging order. There is also no minimum debt level to be able to apply for a charging order, whereas in order to commence bankruptcy proceedings, the debt must exceed £5,000 which means that in some cases bankruptcy would not be appropriate.

## What does a charging order do?

Obtaining a charging order over a property is a route which ensures the creditor secures interest in the debtor's property. This means that when the debtor comes to sell their property, the creditor would be entitled to receive payment of the debt owed to them from the proceeds of the sale, including interest and costs. The main steps of obtaining a charging order include:

- sending an N379 Application for a Charging Order to the court along with liability orders and Title
- serving Interim Charging Order on debtor and creditors (if applicable)
- registering the Interim Charging Order

on the Title

- drafting certificate of service(s)
- applying for a Final Charging Order to the court
- serving Final Charging Order on debtor and creditors (if applicable)
- registering the Final Charging Order on the Title
- drafting certificate of service(s).

Although this process is relatively simple, there are some obstacles which can make the process more difficult.

When a charging order has been obtained from the court, the Interim Charging Order and Final Charging Order can be registered against the debtor's property and this is what secures the creditor's debt. Unfortunately, if a debtor has a number of charges already secured of their property (this will be entries listed on their Land Registry Title) it may mean that there may not be enough equity in the debtor's property so the creditor may not receive their money as it will be distributed in order of priority of the entries on the title. Due to this, it is good practice to determine the value of the property in order to calculate the minimum equity before proceeding to ensure obtaining a charging is not 'fruitless'.

The timescales for obtaining a charging order over a property varies and is fully dependant on the court. Due to the COVID-19 pandemic, the courts have had a large backlog on cases which has slowed down the time it takes to receive the sealed Order, therefore it can sometimes be a lengthy process. Due to this, it is important that the application is completed correctly to ensure there are no unnecessary delays on receiving the Interim Charging Order and Final Charging Order. An added delay can be

that a debtor has the right to contest the charging order against their property. Once contested, a hearing date will be listed which can make the process become costly.

The debtor may also try to sell their property before a charging order has been secured on the property. This can cause problems when the creditor registers their interest on the title because the property would have been transferred to a new owner. Due to this, it is important to complete the necessary steps in a timely manner to minimise the risk of not being able to register the charging order. If the property has been sold, it is the creditor's responsibility to look at other available routes to retrieve their money, for example commencing bankruptcy proceedings.

However, if a debtor owes a large sum of money and an interest has already been registered on the property, an Order for Sale can be made. An Order for Sale is an Order which forces the sale of a property and would mean that any secured interest on the property would be repaid from the proceeds of the sale. If an Order for Sale is made then it is the claimants' (or their solicitors') responsibility to contact creditors listed on the Title to distribute the funds. Once all creditors on the title have been paid, the remaining surplus funds can be transferred to the debtor. The minimum debt level to pursue an Order for Sale is £1,000.



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