The charging order and attachment of earnings process

AUTHOR / KEY CONTACT

Ann Lloyd
Partner

ann.lloyd@la-law.com
01202 786262

On 6 April 2016, the Court updated the procedure for two of the most popular methods of enforcement, namely charging orders and attachment of earnings applications.

The Court centralised the way these applications are processed, so that they are now all sent to the County Court Money Claims Centre (CCMCC) for issue. Fees can be paid via a fee account and applications can also be made online. The aim was to streamline the process to make it more efficient and reduce judicial input spent on the applications. The process for each type of application is set out in further detail below. Most importantly, the need to attend hearings in relation to these applications has been significantly reduced.

Charging orders

A charging order enables a creditor to obtain a charge over a property to secure a debt. When the property is sold or re-mortgaged, the proceeds (depending on the level of equity) are used to settle the amount owed to the creditor.

Forms

The forms used for these applications (N379 for a charging order over land or property and N380 for a charging order over securities) changed on 6 April 2016. They are available here.

Procedure

The application notice is initially considered by a Court Officer without a hearing. If the application meets the relevant criteria, the officer grants the interim order, which is then sent to the creditor for service. If it does not meet the criteria, it is referred to a District Judge, who decides whether to approve the interim charging order or refer the matter to the Defendant's local Court for a hearing to be listed.

Once the interim charging order is granted, it must be served by the creditor within 21 days from the date of the order. The certificate of service must also be filed at Court within 28 days of the date of the interim order. It is vital that these deadlines are complied with, as failure to do so could result in the application being dismissed,

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unless an application is made to the Court to extend the deadline (which would increase costs and may result in other creditors also seeking charging orders obtaining priority).

If any person wishes to object to the Court making a final charging order, they are required to file and serve on the judgment creditor written evidence confirming the grounds for their objection no less than 28 days after they have been served with the application notice and interim order. Should this occur, the matter is transferred for a hearing.

In the absence of objections and if the creditor has complied with the time limits, a Judge considers the application and decides whether to make the order final.

Attachment of earnings

An attachment of earnings order instructs an employer of a Judgment debtor to pay their wages directly to the Court, who then sends the payments to the creditor.

Forms

Form N337 is used for this application, which can be found here.

Procedure

If the Defendant responds to confirm that they are unemployed, the application is dismissed. If the Defendant/employer confirms employment, a Court officer calculates the “Protected Earnings Rate” (PER) and “Normal Deduction Rate” (NDR) and makes a full or suspended attachment of earnings order.

Should the Defendant fail to respond, the Court contacts the Defendant’s employer (if the Claimant has supplied employer details) to request a statement of the Defendant’s earnings.

If the Defendant responds to confirm unemployment, the application is dismissed. Conversely, if the Defendant or employer confirms employment, a Court officer calculates the “Protected Earnings Rate” (PER) and “Normal Deduction Rate” (NDR) and makes a full or suspended attachment of earnings order

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The application must be made to the CCMCC. The Court sends form N56 to the Defendant and requires him or her to respond to the application with details of their income and expenses. This again avoids the need for judicial time to be spent considering applications. If the Defendant provides insufficient details of their income, a hearing is listed in the Defendant's home Court to determine the application.

Comment

The updated procedures are more streamlined and have reduced the need to attend unnecessary Court hearings which would otherwise waste costs and valuable judicial time. Parties must be vigilant when it comes to the strict deadlines to be followed.

Contact

If you have any questions, please get in touch with our Litigation and Recoveries team by emailing online.enquiries@LA-law.com.

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