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## Information Sheet

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### Statutory Charge

#### Information current as at March 2007

By law, the Legal Services Commission can take a charge over real estate for money which is spent on your case. This is called a statutory charge, or a charge for short.

#### **WHAT IS A CHARGE?**

A charge is a way of making sure that you pay back all the money which the Commission has spent on your case.

#### **LEGAL AID IS NOT FREE. If:**

- (a) You or a financially associated person own or are buying real estate (a financially associated person includes a spouse, defacto, and can also include a company, trust or other financial entity) and,
- (b) there is equity in the real estate, then (unless your case costs less than \$1800.00) **YOUR LEGAL AID IS REALLY A LOAN** and the Legal Services Commission will take a charge so that the whole amount is repaid.

#### **WHY IS THERE A CHARGE?**

The purpose of the charge is to make legal aid available to some people who would otherwise miss out because of their real estate. If these people could not get legal aid, they might have to borrow money commercially, sell the real estate or drop the case. The charge means that they can have legal aid but must pay it back eventually. In the meantime, the charge is registered to make sure the money is paid back.

#### **WILL THE CHARGE AFFECT ME?**

The charge applies to you if:-

- (a) you or a financially associated person owns or are buying any real estate,

and

- (b) there is equity in the real estate, unless your case costs less than \$1800.00.

A financially associated person can include a married or non-married partner, and can also include parents or other family members, a company, trust or other financial entity. The Legal Services Commission takes into account household assets, not just your own.

Real estate can include your house, your financially associated person's house, or any other land, share of or interest in land that either of you owns or is buying. This means that Legal Services can take a charge over land that belongs to your partner or other financially associated person even if the court case has nothing to do with them.

Check with your lawyer if you are unsure whether the charge will affect you. By accepting legal aid, you accept all the conditions including the charge. Once the legal costs are spent, the charge will be taken even if you do not agree.

#### **DOES THE CHARGE COST ANYTHING?**

**Yes.** There is an administration fee of **\$300.00** which is added to the amount secured by the charge. This covers the costs of taking, administering and removing the charge. When the Commission is paid back, it gets not only the cost of your case, but the fee as well.

However, **if you pay back early**, the Legal Services Commission will reduce the amount

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secured by the charge. If you pay back the money within 6 months we will discount the amount secured by \$300.00. If you pay back the money within 2 years, we will discount the amount secured by \$150.00. If you pay back within 4 years, we will discount it by \$100.00. You still pay the fee, but you do not pay back all of your costs. If you repay later than that, you pay the whole amount secured and the fee.

### **HOW CAN I TELL IF MY COSTS WILL BE \$1800.00 OR MORE?**

As a rough guide, nearly all family and civil cases cost more than \$1800.00. Very simple criminal cases like guilty pleas and short trials may stay under \$1800.00. Longer or more complicated cases will go over. Ask your lawyer about this. If you want your lawyer to tell you when your legal costs are nearing \$1800.00 write to him/her immediately asking to be told. It is your responsibility to find out whether your costs will go over \$1800.00.

### **WHAT IF I HAVE A MORTGAGE?**

If you have a current mortgage you may be required by your lender to obtain your **lender's consent** before you agree to a charge being taken. This consent is something **you** need to arrange. **Once we have taken the charge we will send a copy of the charge to the lender which holds your mortgage.**

### **HOW DOES THE CHARGE WORK?**

You and your Financially Associated Person (if appropriate) will be required to sign a consent to a charge. We require the consent to be signed before we will extend funding past \$1800.00.

Once accounts over \$1800.00 have been paid a charge over the real estate will be taken. The charge is registered over the title to the real estate. It is recorded at the Lands Titles Office and can be seen on a search. Once we have taken the charge we will write to you.

The Commission can still take the charge, even if you refuse to sign the consent, where costs paid exceed \$1800.00. However, if you do not consent, legal aid will normally be stopped.

We also send a copy of the charge to the lender which holds your mortgage.

The charge means that when the real estate is sold, transferred, refinanced, further mortgaged or when you or your financially associated person die, the whole cost of your case is paid back to the

Legal Services Commission. **This includes the first \$1800.00.**

The charge will stay registered until:

- you choose to repay, or
- you sell or transfer the real estate to a new owner, or
- you re-finance or further mortgage the real estate, or
- you die (or your financially associated person dies, if they own the real estate).

These events might be many years away. We do not take any action to sell the real estate. We simply wait until one of these four things happens. Then the money is paid back to us.

### **WHAT ABOUT REPAYMENT?**

The Legal Services Commission does not ask you to repay until one of the events above happens. Of course, if you want to repay before then, you can. You can decide to repay at any time, either in full or in instalments of not less than \$20.00 at a time.

### **CAN I AVOID THE CHARGE?**

The charge is a condition of your aid. By accepting aid you accept the conditions.

If your case has cost **less** than \$1800.00, when it is finished, we will not take a charge. However, it is **your responsibility** to find out how your costs are going. We do not always know just how much work your lawyer has done, so we cannot tell you.

When a charge is taken, it includes the first \$1800.00.

If the Commission takes a charge, you can appeal against this. You can give any reasons why you think the charge should not apply to you, and if the Commission agrees it can be removed. This is a decision for our Appeal Commissioners. Failing to find out how costs are going will not normally be accepted as a valid reason by Commissioners to avoid a charge.

If a charge has been taken, and the time comes to repay it, but you are facing real hardship, you should tell Legal Services. The Commission can consider whether to accept a reduced payment. If you are buying other real estate consideration can be given as to whether the charge is transferred onto the other real estate.

**WHAT IF I NEED MORE INFORMATION?**

If you are unsure how the charge will affect you, or need to ask any questions, you should ask your lawyer or the Statutory Charges Officer at the Legal Services Commission. The charge cannot be removed just because you did not know or understand how the charge worked. It is up to you to make sure that you fully understand. If you have any questions, now is the time to ask them. If you do not want legal aid on these conditions, tell the Commission now.

*This information is a guide to the law and is not a substitute for legal advice. It is not intended that any person should prefer to rely on the law as stated in this guide rather than choose to consult a lawyer. While care has been taken to ensure the accuracy of material contained in this publication, no responsibility will be accepted for any errors or omissions.*

