

# STATUTORY CHARGE



By law, we can take a charge over real estate to secure repayment of contributions which we ask you to pay. 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 all the money we have asked you to contribute towards the costs of 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 \$2,200.00) THEN YOUR LEGAL AID IS REALLY A LOAN we will take a charge so that the whole amount is repaid.

## WHY IS THERE A CHARGE?

If equity in real estate was assessed as being available for legal fees, (in the same way as cash and shares) then some people who would miss out on legal aid because of their real estate, can get legal aid, provided they secure eventual repayment of their legal aid by statutory charge over that 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 \$2,200.00.

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. We take 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 we 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.

## IS THE GOODS AND SERVICES TAX (GST) INCLUDED IN THE CHARGE?

Yes. Usually GST is payable on the contribution which is secured by the charge and the GST will be added to the amount of the contribution you have to pay.

If the Commission does not recover the full amount of your contribution, in some circumstances the GST will not be payable. This may happen if there is a shortfall when your property is sold and the sale proceeds were not enough to pay your charge in full.

## 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 our costs of taking, administering and removing the charge. When we are paid back, we get not only the cost of your case, but the fee as well.

However, if you pay back early, we will reduce the amount secured by the charge. If you pay back the money within 6 months we will discount the amount secured by \$300. 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 \$2,200.00 OR MORE?

As a rough guide, nearly all family and civil cases cost more than \$2,200.00. Very simple criminal cases like guilty pleas and short trials may stay under \$2,200.00. 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 \$2,200.00 write to him/her immediately asking to be told. It is your responsibility to find out whether your costs will go over \$2,200.00

## THE FUNDING CAP

Commonwealth Funding Guidelines impose a limit on the amount of legal aid funding that can be provided on any one case. This is called the Commonwealth Funding Cap. This cap is applied to all grants of aid including those where a Statutory Charge has been taken.

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## 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 \$2,200.00.

Once we have paid accounts (exclusive of GST) over \$2,200.00 we will ask you to pay a further contribution and will take a charge over the real estate. The contribution will be the difference between the amount of your previous contributions and the amount of the legal costs which have been paid by the Commission.

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.

We can still take the charge, even if you refuse to sign the consent, where costs paid exceed \$2,200.00. 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.

Unlike your previous contributions you DO NOT have to pay the further contribution immediately. 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 of the contribution secured by the charge is paid back to us. This includes the first \$2,200.00.

The charge will stay registered until:

1. you choose to repay, or
2. you sell or transfer the real estate to a new owner, or,
3. you refinance or further mortgage the real estate, or,
4. you die (or your financially associated person dies, if they own the real estate).

These events might be many years away. We simply wait until one of these four things happens. Then, the money is paid back to us.

## WHAT ABOUT REPAYMENT?

We do 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 installments of not less than \$20.00 at a time.

The Commission will not be enforcing the charge until one of these events occur and until then the Commission does not regard the contribution as having accrued for the purposes of the Limitation of Actions Act, 1936.

## 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 the Commission less than \$2,200.00, 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 \$2,200.00.

If we take a charge, you can appeal against this. You can give us any reasons why you think the charge should not apply to you, if we agree we can remove it. This is a decision for our Appeal Committee. 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 us. We can consider whether to accept a reduced payment. If you are buying other real estate we can consider whether to move the charge 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 our Statutory Charges Officer. We cannot remove the charge 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 us now.

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