

CHA-01 Charges and Removals

Version 2 – 18/02/2019

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1 General

Section 105(1) of the Transfer of Land Act 1893 (TLA) provides that

"the proprietor of any land under the operation of this Act may charge the same with the payment of an annuity."

The manner in which this can be achieved is by the preparation of a statutory charge on an [e-form Record Interest - Charge](#) and the registration of that charge. The duplicate certificate of title (if any) must be produced.

A charge is defined in s.4 of the TLA as:

"the instrument creating and charging an annuity."

An annuity is defined as:

"a sum of money payable periodically and charged on land under the operation of the TLA by an instrument there under."

A charge, therefore, is a security for a sum of money paid periodically for the life of the chargee or some shorter defined period. It should have either a commencement date or a date for the payment of the annuity in each year. A charge cannot be for a fixed amount of money. A mortgage is the appropriate security in such a case.

A charge does not operate as a transfer and is treated in much the same fashion as a mortgage. It may be discharged on production of a discharge signed by the chargee or the chargee's personal representative after transmission.

A survivorship application is used in the case of joint annuitants where one is dead. Where all are dead a survivorship application is required to precede a transmission application by the personal representative of the last surviving annuitant. The form to use is and [e-form Change Ownership - Survivorship](#).

The duplicate title should be produced with this document, where one exists.

2 Extension of Charge

The term of an annuity may be extended by the registration of an Extension of Charge using an [e-form Modify Interest - Charge Extension](#) adapted for the purpose.

3 Transfer of Charge

A Charge can be transferred to another person or corporation using the T 3 Form for freehold land and T 3C for Crown land (See [TFR-05 Transfers – of Mortgage, Charge or Lease.](#))

4 Discharge of Charge

There is an [e-form Remove Interest - Charge Discharge](#) for this purpose. A discharge of charge may be:

- total as to annuity and land

- partial as to land, total as to annuity

and

- partial as to annuity, total as to land.

5 Discharge – Where Annuitant is dead and there is no Personal Representative

The document by which this is achieved is an application on an e-form Remove Interest - Charge Application to Remove with the effect of a discharge. Application may be made to the Commissioner under s.125 of the TLA to remove the charge as an encumbrance.

Proof to the satisfaction of the Commissioner, is required as to the death of the annuitant or the occurrence of the event by which the annuity ceases to be payable and as to the payment of the annuity during the lifetime of the annuitant and up to the date of death, before a charge may be removed as an encumbrance. A charge remains an encumbrance on the land until discharged or removed.

Note:

Where the duplicate of a digital title has been produced with the application, the Registrar will cancel it and create and register a new edition of the duplicate title.

Where the duplicate of a paper title has been produced with the application, the Registrar will make an appropriate entry on that duplicate title.

6 Also See

[- DOC-01 Document Preparation](#)

[- MT G-01 Mortgages](#)
