



Part 10: Repayment conditions on a grant – securing an interim or final repayment

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Securing an interim repayment or repayment

When this procedure is used

The Grants Officer uses this procedure to secure an interim or final repayment by:

- a statutory land charge
- a caveat
- a charge on asset other than land registered on the Personal Property Securities Register

Legislation

The key sections of the Act are:

- s 15(3) *Conditions on a grant – authorise a charge*, as amended by of the Legal Services Amendment Act 2006
- s 15(4) *Agency may lodge a caveat*, as amended by the Legal Services Amendment Act 2006
- s 32 *Charge on proceeds of proceedings*

Charges



Under s 15(3) the Grants Officer may require an aided person to authorise the registration of a charge in the Agency's favour. The charge is registered over a specific item of the person's property as security for an interim repayment, or repayment, or both. This is a condition of the grant of aid.

If the aided person's prescribed repayment amount is more than \$300 and they have a property over which a charge may be registered, the aided person will be required to authorise, in writing, a charge over the specified property.

The authorisation is sought when the grant is first approved. The charge will not be registered at this stage. The final value of the charge will be determined once the final repayment has been set.

Roles and responsibilities


- The Grants Officer managing the file will make the decision to require authorisation for a charge. However, once the authorisation letter has been created and sent, the Grants Officer has no further responsibility.
- The DMG:
 - receives the signed authorisation letter from the legally aided person
 - monitors compliance
 - makes the decision to register the charge (when the case is finalised and the final cost of services is known)
 - manages the process to register and release charges

- advises the provider of any requirements to register or release a charge
- decides if a caveat will be registered at any stage.

Procedures


Applicants required to authorise a charge to secure a repayment

Step 1. The Grants Officer determines whether the applicant with property will be required to authorise a charge to secure repayment


If...	then...
<ul style="list-style-type: none"> • the applicant has a prescribed repayment amount of \$300 or more and • is owner or part owner of real estate – land, house, apartment, rental property, <p>Or</p> <ul style="list-style-type: none"> • has an interest in real estate <p> Do not take the amount of equity into account.</p>	<p>the applicant may be required to authorise a charge to be registered against the property.</p> <p>Go to step 2 – determine whether the property will have a charge</p>
<p>The applicant has a prescribed repayment amount with a maximum amount payable based on capital (MAPC) of \$300 or more and</p> <p>owns an asset of value other than real estate</p>	<p>The applicant may be required to authorise a charge to be registered against the asset</p> <p>Go to step 3 – determine whether it is an asset that will have a charge</p>

Identifying real estate property over which a charge may be registered

Step 2. The Grants Officer determines whether the applicant has real estate property over which a charge may be authorised.

 The aided person indicates on the application form whether they own, or part own, a house (or other real estate). The application form or documents such as a rates notice submitted as evidence of ownership should then provide the Grants Officer with sufficient information to identify property over which a charge can be registered.

If...	then...
the name(s) of the owner and address of the property is given	this is sufficient information to produce an Authorisation letter.
the <i>legal</i> description of the property is not available (as seen on the rates notice or other document)	this additional information will be requested in the Authorisation letter.

If...	then...
the agreement of other owner(s) to the charge is required,	it is the responsibility of the applicant to get this. The additional agreement to a charge will be requested in the Authorisation letter
<p>information in the application form indicates that the applicant has an equitable rather than a legal interest,</p> <p> This often occurs in a relationship property matter where the property is in the name of the partner but the applicant potentially has the right to a share in the property. This right is notified against the property title as a claim (Notice of Claim), that is, it is registered an equitable interest.</p>	<p>the Grants Officer will send an Authorisation letter for a caveat rather than a statutory land charge.</p> <p>Go to Caveats, Procedure.</p>
the Grants Officer is unsure whether the aided person has a legal or equitable interest	<p>In the initial grant letter, the provider will be asked to clarify the legal status of the interest in the property. The provider may also be required to register a Notice of Claim first if necessary</p> <p>The Grants Officer will also send an Authorisation letter.</p>
information in the application form indicates the property is owned by a trust	<p>go to <i>'Trusts or other fund'</i>, Part 6 Financial assessment in this manual.</p> <p>The Grants Officer may also refer the issue to a specialist adviser for a recommendation.</p> <p>While this information is being sought, the Grants Officer will need to decide whether:</p> <ul style="list-style-type: none"> • to proceed with a decision on eligibility, or • the information about the trust is required to assess financial eligibility and that a decision cannot be made without this information.

Identifying other assets over which a charge may be registered



Other chargeable assets include, but are not limited to,

- vehicles,

- boats,
- insurance,
- superannuation,
- shares and investments.

In deciding to take a charge over one of these assets, the Grants Officer will:

- consider the nature of the asset and its market value
- seek the approval of their Team Leader to require authorisation of a charge.

Step 3. The Grants Officer determines whether the applicant’s assets (besides real estate) will have a charge registered on the Personal Property Securities Register.

Consider	Guidance
The market value of the asset as assessed (or verified) by the applicant.	The market value should exceed the level of the interim repayment to provide a margin of security.
The nature of the asset.	Some assets significantly depreciate in value over time, eg: vehicles.
The Agency’s ability to exercise its priority over the asset to recover the debt.	The Grants Officer may have to obtain an assurance from the provider/legally aided person on whether there are any existing interests secured against the asset identified as a security. This is also to assess whether there is an adequate security margin to take an Agency charge.
All the above factors along with and approval of the Grants Officer’s Team Leader.	If the Grants Officer decides to impose a charge over the asset, they will create and send an Authorisation letter. Go to step 4 – create and send Authorisation letter.

Letter for Authorisation to register a charge

Step 4. The Grants officer creates and sends an Authorisation letter

If ...	then...
the applicant has met the requirement for the prescribed repayment amount and has a real estate property over which a charge may be registered	the Grants Officer creates and sends an Authorisation letter.
The applicant has met the requirement for the prescribed repayment amount and Has an asset over which a charge may be	

If ...	then...
registered	
the Grants Officer does not have a full description of the chargeable asset other than real estate	<p>the Grants Officer:</p> <ul style="list-style-type: none"> • creates an Authorisation letter and • attaches the Agency form for collecting the full description of the asset and details of the asset's owner.

Withdrawal of aid if the authorisation letter is not returned

Step 5. The Grants Officer withdraws aid if the authorisation letter is not returned.

Step	Action
The applicant or legally aided person fails to return the Authorisation letter.	DMG will send a Notice of intention to withdraw aid in civil/family cases.
The applicant or legally aided person sends their submission on why aid should not be withdrawn due to a default directly to DMG.	<p>DMG will:</p> <ul style="list-style-type: none"> • assess the submission and • seek to negotiate an agreed compliance position with the aided person.
<p>If the applicant or aided person does not send any submission on why aid should not be withdrawn</p> <p>or</p> <p>if the submission is unsuccessful, DMG will</p> <ul style="list-style-type: none"> • not withdraw aid • advise the Grants Officer that either the aided person has not responded, or they have responded but DMG have not been successful in achieving compliance and the aided person is in default • advise the Grants Officer to consider a withdrawal of aid 	The Grants Officer will assess the advice to withdraw aid against other factors on file (about the case or the aided person) and decide whether to withdraw aid or not under s 26 and s 27.
If the Grants Officer decides not to withdraw aid.	<p>The Grants Officer must advise DMG immediately by email.</p> <p>DMG will advise aided person by letter that aid will not be withdrawn.</p> <p>DMG may initiate other debt recovery action.</p>
If the Grants Officer decide to withdraw aid	Go to Part 15 Withdrawal of legal aid in this manual.

Step	Action
If there is a reconsideration or review of the decision to require authorisation to a charge,	The Grants Officer will process this as soon as they can to prevent automatic reminder letters being sent to the aided person.

Fees and disbursements relating to a charge

The following fees and disbursements may be paid to the provider and are added to the amount of the charge. The provider **is not** required to seek an amendment for these fees. They are paid as a disbursement.

The fee for...	is...
preparation and registration of a statutory land charge	\$99.00
preparation and registration of a caveat	\$99.00
preparation of a motor vehicle security in conjunction with a charging agreement	set by Finance at Head Office – please contact Finance.
preparation of any type of security in conjunction with a charging agreement	\$66.00

Disbursements:

- Disbursements for normal search, agency and registration fees.
- General office disbursements can not be claimed. These costs are included in the flat fee rates paid to the provider.

Caveats

Introduction

A caveat is a legal document that is registered with Land Information New Zealand against a title of land and records the Agency's interest over the property. It prevents the sale of the land without the Agency's consent but does not secure a specific debt amount.

Policy

The DMG will require a caveat to be lodged when the person has been requested and reminded to authorise a charge and has not done so.

Grants will only require the aided person to authorise registration of a caveat if the applicant has an equitable interest rather than legal interest in a property.

In criminal matters, the DMG will lodge a caveat if it estimates the final cost of services will be over \$1,500. In other matters, the DMG will initiate the notice of

intention to withdraw of aid if the authorisation is not received, and may also lodge a caveat if the cost of services to date is over \$1,500.

A caveat may be registered at any time after legal aid has been granted. The legally aided person will be notified when the DMG has registered a caveat

Procedure

Step	Action
When the grant is first approved.	The Grants Officer can only seek authorisation for a caveat (rather than a statutory land charge) where the applicant has an equitable interest in property. See Charges , step 1 (Applicants required to authorise a charge to secure a repayment)
The same procedure is followed as for sending the Authorisation letter for charges. See Charges , steps 2, 3 & 4.	
Authorisation letter issued to applicant.	A standard Authorisation letter is available for a caveat.
After the initial grant, DMG will monitor the commitment on the grant and will identify: <ul style="list-style-type: none"> ▪ grants that exceed \$3,000 and ▪ where the aided person has property over which a caveat may be registered. 	The Grants Officer is not involved in this process.
DMG may register a caveat at any other time whether the grant is active or not.	The Grants Officer is not involved in this process.

Proceeds of proceedings

Introduction

This section covers the policies and procedures relating to proceeds of proceeds and includes:

- an overview of the form proceeds may take
- requirements for advising the applicant when the grant is first approved
- proceeds in the final repayment calculation
- repayment from proceeds of proceedings

Legislation

The keys sections in the Act on setting conditions on a grant in regard to proceeds of proceeding are:

- *S4 Interpretation – proceeds of proceedings*

- S18 *Amount of repayment payable*, as amended by the Legal Services Amendment Act 2006.
- S32 *Charge on proceeds of proceedings*
- S33 *Agency may exempt a property from charge*

Defining proceeds of proceedings

Proceeds of proceedings	Definition
Proceeds of proceedings	are the money, property or costs awarded to the legally aided person as a settlement or in a judgment.
	only apply to civil/family cases but not for proceedings heard by the Waitangi Tribunal.
Examples of case types where proceeds of proceedings are likely are:	<ul style="list-style-type: none"> ▪ Relationship property ▪ ACC ▪ Employment ▪ Family Protection ▪ Testamentary Promises ▪ Summary Judgment.
Proceeds of proceedings would include, but are not limited to:	<ul style="list-style-type: none"> ▪ ownership/interest in property ▪ cash settlement in a lump sum ▪ cash settlement payable over a period of time ▪ cash settlement payable on a specific date in the future (eg: maturity of an investment) ▪ cash settlement after a specific action (eg: sale of a home) ▪ ownership of other financial settlement (eg: superannuation) ▪ investments ▪ vehicles ▪ chattels ▪ court awarded costs.

Policy

Section 32 of the Act creates a charge in the Agency's favour over proceeds of proceedings. The Agency does not need to obtain authorisation from the aided person for this charge. However, the Agency will always inform the aided person that a charge exists if the matter is one where proceeds of proceedings could result.

The calculation of the final repayment under s18 includes the value of any proceeds of proceedings.

When aid is first approved



A possible repayment from proceeds of proceedings (including costs awarded to the legally aided person) does not affect the establishment of the prescribed repayment amount and interim repayment amounts when the grant is first approved. These will be established whether or not there may be proceeds of proceedings and an interim repayment plan will be established, as appropriate.

Step 1. The Grants Officer assesses application and advises the LAP and provider.

Step	Action
Assess the application to establish:	<ul style="list-style-type: none"> the prescribed repayment amount (PRA) any interim repayment requirement, amount and plan any requirement to seek authorisation of a charge over property, if it is not the subject of the proceedings.
In the initial grant letter generated from LA Office.	Advise the applicant that: <ul style="list-style-type: none"> repayment from any proceeds of proceedings will be required actual recovery is decided at the end when the cost of services is known.
	Advise the provider: <ul style="list-style-type: none"> about the Agency's charge on the proceeds and the provider's obligation to protect the Agency's interest. Go to step 2, <i>When the matter is finalised</i>



Proceeds can be received before the case is finalised. For example, an award of costs, or settlement of relationship property before care proceedings are completed. If proceeds of proceedings, other than an award for costs, are received before the end of the case, the Grants Officer will reassess the applicant's eligibility for legal aid.

When the matter is finalised

Step 2. The Grants Officer determines the final repayment payable.

When the matter is finalised	Action
Calculate the amount of repayment payable according to Section 18 (see <i>Final</i>)	<ul style="list-style-type: none"> advise the legally aided person seek repayment from the proceeds of

When the matter is finalised	Action
<p><i>Repayment</i> section in this manual):</p> <ul style="list-style-type: none"> • The value of the proceeds of proceedings is a part of the calculation. • The proceeds of proceedings may be applied only to the repayment of the cost of services of the matter out of which the proceeds arose and not to any other matters covered by the grant. ▪ LA Office does the calculation – see the section on Final Repayment in this manual. 	<p>proceedings</p> <p>End of process for Grants</p>



Where there are proceeds of proceedings it is possible that the final repayment figure may exceed the applicant's PRA. This will occur if the cost of services and proceeds are both greater than the PRA.

Repayment from proceeds

Policy

The Agency will seek repayment from proceeds of proceedings immediately unless the proceeds are a home that the applicant will live in. The DMG is likely to propose a repayment plan that meets this objective.

If the proceeds of proceedings are a home that the applicant will live in, the DMG will secure the repayment by a charge over this property.

Wherever possible, a repayment from proceeds of proceedings will also be secured by:

- a statutory land charge over other property, if this is likely to be sold before the home
- a charge over any other asset.

Procedure



The DMG is responsible for any further action in regard to proceeds of proceedings.

Step	Action
having the proceeds assigned to the Agency	DMG will request to have proceeds of proceedings assigned to the Agency up to the cost of services and will pursue recovery of these from the other party.
registering a charge over any asset	Until payment of the proceeds is secured or agreed, DMG will wherever possible establish an alternative repayment plan

Step	Action
	based on income or on capital and secure the debt where possible.
making a decision on any application for exemption from the section 32 charge write-off	If the proceeds are not recoverable, DMG can consider an application under its Write Off Policy to write off some or all of the debt.