



**THE DISTRICT COURTS RULES 1948, AMENDMENT NO. 22**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 21st day of November 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 122 of the District Courts Act 1947, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

ANALYSIS

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2. Certificate of judgment or order
3. New heading and rules inserted

“CHARGING ORDERS

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- 244C. Value of property exceeding \$12,000
- 244D. Charging order where amount involved small
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- 244G. Claim of third person on property charged
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- “Charging Orders Affecting Land in Name of Judgment Debtor*
- 244I. Order absolute in first instance
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- 244P. Property other than land

<p>244Q. Order <i>nisi</i> in first instance</p> <p>244R. Effect of order <i>nisi</i></p> <p>244s. Liability of persons contravening charging order <i>nisi</i></p> <p>244T. Money may be paid into Court</p> <p>244U. Application to make order absolute</p>	<p style="text-align: center;"><i>“Miscellaneous Provisions</i></p> <p>244v. Costs of charging orders</p> <p>244w. Removal of charging order absolute to High Court”</p> <p>4. New forms</p> <p>5. Court fees prescribed in connection with charging orders</p> <p>6. Solicitors’ costs in respect of charging orders Schedule</p>
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## RULES

**1. Title and commencement**—(1) These rules may be cited as the District Courts Rules 1948, Amendment No. 22, and shall be read together with and deemed part of the District Courts Rules 1948\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of January 1989.

**2. Certificate of judgment or order**—Rule 223 (3) of the principal rules is hereby amended by inserting, after the expression “form No. 60”, the expression “or form No. 60A”.

**3. New heading and rules inserted**—The principal rules are hereby amended by inserting, after rule 244, the following headings and rules:

### “CHARGING ORDERS

“244A. **Applications for charging orders**—(1) Any person who has obtained a judgment or order for the payment of money (in rules 244B to 244W of these rules referred to as the judgment creditor) may make application to the Court *ex parte* for an order under section 96A of the Act (in rules 244B to 244W of these rules referred to as a charging order).

“(2) The application shall be in the form No. 69A and shall be accompanied by an affidavit in the form No. 69B.

“(3) The property in respect of which the charging order is sought shall be specified in the application in such manner as to identify it.

“(4) That property shall be property of any of the following kinds:

“(a) Any estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in the judgment debtor’s own name:

“(b) Any right or interest of the judgment debtor in any partnership:

“(c) Any shares held by the judgment debtor in any company incorporated in New Zealand, or having an office in New Zealand in which transfers of shares may be registered:

“(d) Any estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares, or other chattels, held under or by virtue of any express or implied trust for the judgment debtor.

\*S.R. 1948/197 (Reprinted with Amendments Nos. 1-17: S.R. 1981/259)  
 Amendment No. 18: (Revoked by S.R. 1987/43)  
 Amendment No. 19: S.R. 1986/358  
 Amendment No. 20: (Revoked by S.R. 1988/30)  
 Amendment No. 21: S.R. 1988/30

**“244B. Filing of application—**(1) Every application under rule 244A (1) of these rules shall be filed in the office of the Court in which the judgment was obtained or the order was made.

“(2) No application for a charging order shall be filed until the expiration of 48 hours after the time of the entering of the judgment or the making of the order, unless a District Court Judge gives leave for immediate execution. The provisions of rule 336 (2) of these rules shall not apply to this rule.

“(3) The Registrar shall note on the application and on the charging order the precise time when the application for the charging order was made.

“(4) The judgment creditor shall prepare and file with the application a draft order and a copy for every person it is intended to affect thereby.

“(5) The Registrar shall notify the judgment creditor, as soon as practicable after the application has been heard, of the outcome of the hearing.

**“244C. Value of property exceeding \$12,000—**An application for a charging order may be filed, and a charging order may be made, notwithstanding that the property to which the application or the charging order relates has a value exceeding \$12,000.

**“244D. Charging order where amount involved small—**Where it appears that the amount involved is so small that the making of a charging order is vexatious or worthless, the Court may refuse the application for a charging order, or, if the charging order has been made (whether as of right or on application), discharge the charging order.

**“244E. Form of charging order—**A charging order shall be in the form No. 69C or the form No. 69D or the form No. 69F, as is appropriate.

**“244F. Application for relief by persons prejudicially affected—**(1) Any person alleging that that person is prejudicially affected by any charging order may at any time apply to the Court for relief in accordance with this rule.

“(2) On an application under subclause (1) of this rule the Court may—

“(a) Vary or discharge the order; or

“(b) Cancel the registration or modify the effect of registration of any order affecting land.

“(3) The powers of the Court under this rule are in addition to its powers under rules 229 and 230 of these rules.

**“244G. Claim of third person on property charged—**(1) Where it is alleged that the land or other property affected by a charging order belongs to some third person or that some third person has a claim thereon by way of lien, charge, or otherwise, the Registrar shall issue a summons in the form No. 69G together with a copy thereof.

“(2) The summons shall be served on the third person a reasonable time before the day fixed for the hearing.

“(3) If the third person does not appear at the hearing of the matter, the District Court Judge, upon proof of service, may make such order as the District Court Judge may think just.

“(4) Such third person may also attend without special order on the application to make the order absolute, or on any application to set aside or vary the same, on giving 24 hours' notice of that person's intention to

do so, unless a District Court Judge gives leave for attendance without such notice having been given.

**“244H. Apportionment when more than one charging order**—Where more than one charging order has been made against the same person, the Court may at any time, on the application of that person, or any other person claiming to be affected, determine how much or what part of the property affected by such order or paid into Court shall be for the separate use of each party who has obtained a charging order.

*“Charging Orders Affecting Land in Name of Judgment Debtor*

**“244I. Order absolute in first instance**—Where the property sought to be charged is an estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in that judgment debtor’s own name, the charging order shall be absolute in the first instance.

**“244J. Registration of charging order under Land Transfer Act 1952**—(1) A charging order which is made under rule 244I of these rules and which is in respect of land that is under the Land Transfer Act 1952 shall be registered against the certificate of title to the land under that Act.

“(2) Such a charging order—

“(a) Shall—

“(i) Contain a description of the land affected sufficient to identify that land; or

“(ii) Refer to a certificate of title or other instrument containing such a description; and

“(b) Unless the land is the whole of the land comprised in a certificate or certificates of title, or is shown separately on a plan deposited under the provisions of the Land Transfer Act 1952, shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

“(3) When the charging order is presented for registration, a duplicate of it shall be deposited with the District Land Registrar.

**“244K. Registration of charging order under Deeds Registration Act 1908**—(1) A charging order which is made under rule 244I of these rules and which is in respect of land that is not under the Land Transfer Act 1952 shall be registered with the Registrar of Deeds for the district in which the land is situated according to the law in force for the time being for the registration of deeds.

“(2) Such a charging order—

“(a) Shall contain a description of the land affected, or shall refer to the Crown grant or other instrument, sufficient to identify that land; and

“(b) Shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

**“244L. Lodging of charging order under Mining Act 1971**—(1) A charging order which is made under rule 244I of these rules and which is in respect of a mining privilege within the meaning of the Mining Act 1971 shall be lodged with the District Land Registrar in whose office the mining privilege is recorded.

“(2) Such a charging order—

“(a) Shall—

“(i) Contain a description of the land affected sufficient to identify that land; or

“(ii) Refer to a document granting or issuing the mining privilege, or to such other instrument by virtue of which the mining privilege was acquired, containing such a description; and

“(b) Unless the land affected comprises the whole of the land to which the mining privilege relates, or is shown separately on a plan deposited under the provisions of the Mining Act 1971, shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

“(3) When the charging order is lodged, a duplicate of it shall be deposited with the Secretary for Energy.

“(4) The District Land Registrar with whom the charging order is lodged shall not be required to enquire whether a duplicate of the charging order has been deposited with the Secretary for Energy.

“244M. **Sale before registration of charging order**—Until registration of a charging order in respect of land, or the lodging of a charging order with the District Land Registrar in respect of a mining privilege, no sale or transfer of the land or of any part thereof or of the mining privilege under a writ of sale shall have any effect as against a purchaser for valuable consideration, notwithstanding that the writ of sale may have been actually delivered for execution at the time of purchase, and that the purchaser may have had actual or constructive notice of the delivery of the writ of sale for execution.

“244N. **Registration of satisfaction**—Upon registration with the District Land Registrar or Registrar of Deeds (as the case may be) of a memorandum of satisfaction of the judgment or order in the proceeding in which the charging order has been made, or other sufficient evidence of satisfaction, or an order of the Court to that effect, the land or mining privilege, as the case may be, shall be discharged from the charging order.

“244O. **Lapse of charging order after 2 years**—(1) Unless an instrument of transfer or a deed of conveyance or assignment consequent upon a writ of sale of the land or mining privilege affected by a charging order is registered or lodged within 2 years after the date of the charging order, the charging order shall, subject to subclause (2) of this rule, cease to bind the land or mining privilege, as the case may be, and shall be deemed to have been discharged.

“(2) The Court may, where justice so requires, extend the effect of a charging order for such period as may be necessary.

*“Charging Orders Affecting Other Property*

“244P. **Property other than land**—A charging order may charge property, other than land referred to in rule 244I of these rules, as follows:

“(a) The right or interest of the judgment debtor in any partnership:

“(b) Any shares held by the judgment debtor in any company incorporated in New Zealand, or having an office in New Zealand in which transfers of shares may be registered:

“(c) The estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares, or other chattels, held under or by virtue of any express or implied trust for the judgment debtor.

“244Q. **Order nisi in first instance**—(1) A charging order under rule 244P of these rules shall be a charging order limited until sufficient cause is shown to the contrary and such a charging order, so limited, is hereafter referred to in this rule and in rules 244R to 244U of these rules as a charging order *nisi*.

“(2) A charging order *nisi* shall be served on the person it is intended to affect thereby.

“(3) Where a charging order *nisi* is intended to affect an estate, right, or interest in land held under or by virtue of any trust, that charging order *nisi* may also be registered against the land or a caveat may be entered in respect of the charging order *nisi*.

“244R. **Effect of order nisi**—A charging order *nisi* shall restrain the person served with it—

“(a) From making, or concurring in making or permitting any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the judgment debtor; or

“(b) From paying over any income, interest, dividends, bonus, profits, or other money due or accruing due to the judgment debtor,—  
except in accordance with these rules or by leave of the Court.

“244s. **Liability of persons contravening charging order nisi**—Where any person, who has been served with a charging order *nisi*,—

(a) Pays over any money in contravention of the terms of the order; or

(b) Makes or concurs in making, or permits any conveyance, transfer, assignment, or disposition in contravention of the terms of the order,—

that person, in addition to, or in lieu of, any penalty that may be imposed upon that person under any other rule, may be ordered to pay to the party obtaining the order the amount of money so paid, or the value of the property disposed of, or a sufficient part thereof to satisfy the judgment or order that the party obtaining the order has obtained in the proceeding.

“244T. **Money may be paid into Court**—Any person affected by a charging order *nisi* may pay into Court any money to abide the order of the Court.

“244U. **Application to make order absolute**—(1) At any time after a judgment creditor has obtained a charging order *nisi*, the judgment creditor may apply to the Court on notice to have that charging order *nisi* made absolute.

“(2) The application shall be in the form No. 69E.

“(3) On an application under subclause (1) of this rule, the Court may make such orders and give such directions for the disposal of money paid into Court pursuant to rule 244T of these rules as may be just.

“*Miscellaneous Provisions*”

“244V. **Costs of charging orders**—The judgment creditor may, unless the Court otherwise directs, recover from the judgment debtor against whom a charging order has been made, the fees, costs, and expenses incurred in respect of, and incidental to, the making of the charging order.

“244W. **Removal of charging order absolute to High Court**—(1) A judgment creditor who has obtained a charging order absolute may apply

to the Registrar of the District Court for the removal of that charging order into the High Court in order that the charging order may be enforced in the High Court in the same way as if the charging order had been issued by the High Court.

“(2) After an order has been made for the removal of a charging order into the High Court any matters raised relating to the charging order shall be determined by the High Court in the same way as if the charging order had been issued by the High Court.”

**4. New forms**—(1) The Second Schedule to the principal rules is hereby amended by inserting, after form No. 60, the form No. 60A set out in the Schedule to these rules.

(2) The Second Schedule to the principal rules is hereby further amended by inserting, before form No. 70, the forms Nos. 69A to 69G set out in the Schedule to these rules.

**5. Court fees prescribed in connection with charging orders**—The Third Schedule to the principal rules (as substituted by rule 2 of the District Courts Rules 1948, Amendment No. 21), is hereby amended by inserting, after the item number 9, the following item:

“9A. Application for charging order *nisi* or charging order absolute . . . . . 40”.

**6. Solicitors' costs in respect of charging orders**—The Fifth Schedule to the principal rules (as substituted by rule 15 of the District Courts Rules 1948, Amendment No. 19) is hereby amended by adding the following items:

“29. Preparing application for charging order absolute or <i>nisi</i> and affidavit in support . . . . .	40
30. Appearance to obtain a charging order absolute or <i>nisi</i> on an uncontested application . . . . .	30
31. Appearance to obtain a charging order absolute on a contested application . . . . .	60”.

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SCHEDULE

R. 4

NEW FORMS 60A, 69A, 69B, 69C, 69D, 69E, 69F, AND 69G PRESCRIBED

R. 223 (3)]

CERTIFICATE OF CHARGING ORDER

[D.C. 60A

Extract from the Miscellaneous Applications Book in the District Court at .....

Date of Filing	Number	Applicant	Respondent	Nature of Application	Date of Decision	Decision	District Court Judge or Registrar	Fees

I hereby certify that the above (\*issued for the purposes of section 66 of the District Courts Act 1947) is a true copy of an entry in the miscellaneous applications book in my custody, showing the minute of the charging order in the above case, and that, according to the records of this office, the estate, right, or interest of the judgment creditor in [Description of property affected] stands charged with payment of the amount of \$...., being the amount (or being part of the amount) for which the judgment creditor has obtained judgment in this proceeding.

And I do further certify that, according to the records of this office, the following is a description of the parties in the above case: ....., of [Address, occupation], judgment creditor, and ....., of [Address, occupation], judgment debtor.

Amount with which the property described stands charged, including costs	..	..	..	..	..	..	..	..
Subsequent costs	..	..	..	..	..	..	..	..
Costs of this certificate	..	..	..	..	..	..	..	..
Paid into Court	..	..	..	..	..	..	..	..
Total sum now due	..	..	..	..	..	..	..	..

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SCHEDULE—*continued*

(†This certificate is issued under rule 223, for evidential purposes only.)

Given under my hand and seal of the Court at ..... this ..... day of ..... 19....

.....  
Registrar of the District  
Court at .....

\*Delete if certificate issued for evidential purposes only.

†Delete if certificate issued for the purposes of section 66 of the District Courts Act 1947.

SCHEDULE—continued

R. 244A (2)]

[D.C. 69A

Ex Parte APPLICATION FOR A CHARGING ORDER

In the District Court held at .....

Plaint No: ..... Between ..... Judgment Creditor, and ..... Judgment Debtor

The above-named judgment creditor (or the duly authorised agent of the above-named judgment creditor), hereby applies to the District Court at ..... for the making of a charging order under section 96A of the District Courts Act 1947.

The charging order sought is a charging order nisi (or absolute, as the case may be) affecting the property of the judgment debtor known as [Here state, in such manner as to identify it, the nature and location of the property to be the subject of the charging order].

The order is sought upon the grounds set out in the affidavit appended hereto.

Dated at ....., this ..... day of ..... 19...

..... Signature

To the Registrar of the District Court at ..... This application is filed by ....., whose address for service is at .....

Table with 4 columns: Application filed, Order made, Date, Time, Initials

R. 244A (2)]

[D.C. 69B

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CHARGING ORDER

(Title—As in form 69A)

I, ....., of ....., [Occupation], make oath and say:

(1) That on the ..... day of ..... 19..., in the District Court held at ....., the above-named judgment creditor, obtained a judgment (or order) in this proceeding against the above-named judgment debtor for the payment of the sum of \$....., including costs.

(2) That the said judgment (or order) (or the sum of \$....., part of the said sum adjudged (or ordered) to be paid) is still unsatisfied.

(3) That I verily believe that the judgment debtor is beneficially entitled to the following property:

[Specify type of property, following the wording of rule 244A (4) as closely as possible, including—

(a) In the case of land,—

(i) The alleged estate, right, title, or interest of the judgment debtor; and

SCHEDULE—continued

(ii) In such manner as to identify it, the nature, location, and description of the property:

- (b) In the case of any right or interest in a partnership, the name and business address of the partnership and the extent of the alleged interest:
- (c) In the case of shares, the name of the company, the address of its registered office, and the alleged number and denomination of the shares:
- (d) In the case of any estate, right, or interest in any land, or in any money, shares, or other chattels, held under or by virtue of any trust for the judgment debtor, the name and address of the trustee or trustees of the trust.]

.....  
[Signature of Deponent]

Sworn at ....., this ..... day of ..... 19...., before me—

.....  
Registrar.  
Solicitor.  
Justice of the Peace.

R. 244E]

[D.C. 69C

CHARGING ORDER ON LAND

(Title—As in form 69A)

On the application of the judgment creditor, it is ordered that the estate, right, title, or interest of the [State party] in [Here describe the land intended to be affected] do stand charged with payment of the amount of \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment or order in this proceeding.

Dated at ....., this ..... day of ..... 19....

.....  
Registrar.

NOTICE—Application was made to the Registrar of the Court for the making of this order at ..... minutes past the hour of ..... in the ..... noon of the ..... day of 19...., by ....., Agent for the judgment creditor.

.....  
Registrar.

R. 244E]

[D.C. 69D

CHARGING ORDER NISI

(Title—As in form 69A)

On the application of the judgment creditor, it is ordered that, until sufficient cause is shown to the contrary, the interest of the [State party] in [Here describe the property intended to be affected] do stand charged with payment of the amount of \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment or order in this proceeding.

Dated at ....., this ..... day of ..... 19....

SCHEDULE—continued

.....  
Registrar.

NOTICE—Application was made to the Registrar of the Court for the making of this order at ..... minutes past the hour of ..... in the ..... noon of the ..... day of 19..., by ....., Agent for the judgment creditor.

.....  
Registrar.

R. 244U (2)]

[D.C. 69E

NOTICE OF APPLICATION FOR A CHARGING ORDER ABSOLUTE

(Title—As in form 69A)

TAKE notice that the above-named judgment creditor (or the duly authorised agent of the above-named judgment creditor), will apply to the District Court at ..... on [To be filled in by the Registrar] .....day the ..... day of ..... 19 ... at ... o'clock in the ..... noon, for the making of a charging order absolute under section 96A of the District Courts Act 1947.

The charging order sought is a charging order absolute affecting the property of the judgment debtor known as [*Here state, in such manner as to identify it, the nature and location of the property to be the subject of the charging order*].

.....  
Signature

\_\_\_\_\_

To the Registrar of the District Court at .....  
and

To the above-named .....

This notice of application is filed by ..... whose address for service is at .....

*The following information is to be written in the left-hand margin of the form:*

If in doubt, consult a solicitor or the Registrar immediately.

R. 244E]

[D.C. 69F

CHARGING ORDER ABSOLUTE

(Title—As in form 69A)

Upon reading the order nisi made herein on the ..... day of ..... 19 ....., and the affidavits of [*State name*] filed herein and upon hearing [*State name*] of counsel for the judgment creditor and [*State name*] of counsel for the judgment debtor, it is ordered that [*Here specify the property intended to be charged*] do stand charged with \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment or order in this proceeding.

Dated at ....., this ..... day of ..... 19....

.....  
Registrar.

## SCHEDULE—continued

R. 244G (1)]

[D.C. 69G

SUMMONS TO PERSONS CLAIMING LAND OR OTHER PROPERTY SUBJECT TO  
CHARGING ORDER

(Title—As in form 69A)

To [Name, address, and occupation]

WHEREAS a charging order, a copy of which is hereunto annexed, has been made by this Court on .....day, the ..... day of ..... 19 ....., in respect of land (or other property) [*Here describe land or other property affected*]:

AND WHEREAS it has been alleged that the land (or other property) the subject of that charging order belongs to you [or that you have a claim by way of lien, charge, or otherwise on the land (or other property) the subject of that charging order]:

You are hereby summoned to attend at the District Court at ..... on ..... day, the ..... day of ..... 19...., at ..... o'clock in the .....noon, when you will be ordered to state the nature and particulars of your claim.

Dated at ....., this ..... day of ..... 19....

.....  
Registrar.

*The following information is to be written in the left-hand margin of the form:*

The office of the Court is open to the public from ..... to ..... on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

MARIE SHROFF,  
Clerk of the Executive Council.

## EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 1 January 1989, amend the District Courts Rules 1948.

*Rule 2* makes an amendment to the principal rules that is consequential upon the prescription of a new form 60A by rule 4 of these rules.

*Rule 3* provides a set of rules governing the making of charging orders in the District Court that are analogous to those contained in the High Court Rules, and provides for the transfer of a charging order absolute to the High Court for enforcement.

*Rule 4* prescribes certain new forms. New form No. 60A is to be used when the Registrar of a District Court is required to issue a certificate of a charging order for the purpose of removing the charging order into the High Court. New forms Nos. 69A to 69G prescribe forms of application, affidavit, order, and summons in connection with charging orders.

*Rule 5* provides that on any application for a charging order a prescribed fee shall be payable to the Court.

*Rule 6* inserts new items in the Fifth Schedule to the principal rules, which contains a scale of solicitors' costs, in respect of charging orders.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 November 1988.

These rules are administered in the Department of Justice.