

Florida Legislative Update—LLC Charging Liens [Florida]

August 31, 2011

Florida has modified Fla.Stats. §608.433 to both clarify and change the rights of creditors vis-à-vis LLC owner interests owned by debtors.

First, the statute has been modified to make clear that the charging lien is the sole and exclusive remedy of a creditor against a debtor's LLC interest, *if the LLC has more than one member*. A creditor is expressly prohibited from seeking a foreclosure sale of the member's LLC interest.

Second, if the debtor is the sole member of the LLC, a creditor's remedies are not restricted to a charging lien. Thus, for example, the creditor can foreclose on the member's LLC interest, and the purchaser at the foreclosure sale can obtain full voting and other powers over the interest (that is, the sold interest will not be limited to an "assignee" interest). However, before remedies other than a charging lien are allowed, the creditor must establish to the satisfaction of a court that distributions under a charging order will not satisfy the judgment within a reasonable time. The new statute should provide statutory certainty to the issues raised in the 2010 Olmstead decision.

Thus, the use of single-member LLC's should not be relied upon as an asset protection mechanism. For planning, the addition of *bona fide* additional members may allow for a limitation of remedies to a charging lien if not subject to challenge on a sham, fraudulent conveyance, or other equitable theory.

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