

By Senator Simmons

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1                   A bill to be entitled  
2           An act relating to limited liability companies;  
3           amending s. 608.433, F.S.; providing that a charging  
4           order against a member's limited liability company  
5           interest is the sole and exclusive remedy available to  
6           enforce a judgment creditor's unsatisfied judgment  
7           against a member or member's assignee; providing an  
8           exception for enforcing a judgment creditor's  
9           unsatisfied judgment against a judgment debtor or  
10          assignee of the judgment debtor of a single-member  
11          limited liability company under certain circumstances;  
12          providing legislative intent; providing for  
13          retroactive application; providing an effective date.

14  
15          WHEREAS, on June 24, 2010, the Florida Supreme Court held  
16          in *Olmstead v. Federal Trade Commission* (No. SC08-1009),  
17          reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L.  
18          Weekly S357, that a charging order is not the exclusive remedy  
19          available to a creditor holding a judgment against the sole  
20          member of a Florida single-member limited liability company  
21          (LLC), and

22          WHEREAS, a charging order represents a lien entitling a  
23          judgment creditor to receive distributions from the LLC or the  
24          partnership that otherwise would be payable to the member or  
25          partner who is the judgment debtor, and

26          WHEREAS, the dissenting members of the Court in *Olmstead*  
27          expressed a concern that the majority's holding is not limited  
28          to a single-member LLC and a desire that the Legislature clarify  
29          the law in this area, and

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30 WHEREAS, the Legislature finds that the uncertainty of the  
31 breadth of the Court's holding in *Olmstead* may persuade  
32 businesses and investors located in Florida to organize LLCs  
33 under the law in other jurisdictions where a charging order is  
34 the exclusive remedy available to a judgment creditor of a  
35 member of a multimember LLC, and

36 WHEREAS, the Legislature further finds it necessary to  
37 amend s. 608.433, Florida Statutes, to remediate the potential  
38 effect of the holding in *Olmstead* and to clarify that the  
39 current law does not extend to a member of a multimember LLC  
40 organized under Florida law and to provide procedures for  
41 application of the holding in *Olmstead* to a member of a single-  
42 member LLC organized under Florida law, NOW, THEREFORE,

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Section 608.433, Florida Statutes, is amended to  
47 read:

48 608.433 Right of assignee to become member.—

49 (1) Unless otherwise provided in the articles of  
50 organization or operating agreement, an assignee of a limited  
51 liability company interest may become a member only if all  
52 members other than the member assigning the interest consent.

53 (2) An assignee who has become a member has, to the extent  
54 assigned, the rights and powers, and is subject to the  
55 restrictions and liabilities, of the assigning member under the  
56 articles of organization, the operating agreement, and this  
57 chapter. An assignee who becomes a member also is liable for the  
58 obligations of the assignee's assignor to make and return

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59 contributions as provided in s. 608.4211 and wrongful  
60 distributions as provided in s. 608.428. However, the assignee  
61 is not obligated for liabilities which are unknown to the  
62 assignee at the time the assignee became a member and which  
63 could not be ascertained from the articles of organization or  
64 the operating agreement.

65 (3) If an assignee of a limited liability company interest  
66 becomes a member, the assignor is not released from liability to  
67 the limited liability company under s. ~~ss.~~ 608.4211, s.  
68 608.4228, or s. and 608.426.

69 (4) (a) On application to a court of competent jurisdiction  
70 by any judgment creditor of a member or a member's assignee, the  
71 court may enter a charging order against the limited liability  
72 company interest of the judgment debtor or assignee rights for  
73 ~~charge the limited liability company membership interest of the~~  
74 ~~member with payment of~~ the unsatisfied amount of the judgment  
75 plus with interest.

76 (b) A charging order constitutes a lien on the judgment  
77 debtor's limited liability company interest or assignee rights.  
78 Under a charging order ~~To the extent so charged~~, the judgment  
79 creditor has only the rights of an assignee of a limited  
80 liability company interest to receive any distribution or  
81 distributions to which the judgment debtor would otherwise have  
82 been entitled from the limited liability company, to the extent  
83 of the judgment, including ~~such~~ interest.

84 (c) This chapter does not deprive any member or member's  
85 assignee of the benefit of any exemption law ~~laws~~ applicable to  
86 the member's limited liability company interest or the  
87 assignee's rights to distributions from the limited liability

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88 company.

89 (5) Except as provided in subsections (6) and (7), a  
90 charging order is the sole and exclusive remedy by which a  
91 judgment creditor of a member or member's assignee may satisfy a  
92 judgment from the judgment debtor's interest in a limited  
93 liability company or rights to distributions from the limited  
94 liability company.

95 (6) In the case of a limited liability company having only  
96 one member, if a judgment creditor of a member or member's  
97 assignee establishes to the satisfaction of a court of competent  
98 jurisdiction that distributions under a charging order will not  
99 satisfy the judgment within a reasonable time, a charging order  
100 is not the sole and exclusive remedy by which the judgment  
101 creditor may satisfy the judgment against a judgment debtor who  
102 is the sole member of a limited liability company or the  
103 assignee of the sole member, and upon such showing, the court  
104 may order the sale of that interest in the limited liability  
105 company pursuant to a foreclosure sale. A judgment creditor may  
106 make a showing to the court that distributions under a charging  
107 order will not satisfy the judgment within a reasonable time at  
108 any time after the entry of the judgment and may do so at the  
109 same time that the judgment creditor applies for the entry of a  
110 charging order.

111 (7) In the case of a limited liability company having only  
112 one member, if the court orders foreclosure sale of a judgment  
113 debtor's interest in the limited liability company or of a  
114 charging order lien against the sole member of the limited  
115 liability company pursuant to subsection (6):

116 (a) The purchaser at the court-ordered foreclosure sale

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117 obtains the member's entire limited liability company interest,  
118 not merely the member's transferable interest;

119 (b) The purchaser at the sale becomes the member of the  
120 limited liability company; and

121 (c) The person whose limited liability company interest is  
122 sold pursuant to the foreclosure sale or is the subject of the  
123 foreclosed charging order ceases to be a member of the limited  
124 liability company.

125 Section 2. The amendment to s. 608.433, Florida Statutes,  
126 made by this act is intended by the Legislature to be clarifying  
127 and remedial in nature and shall apply retroactively.

128 Section 3. This act shall take effect upon becoming a law.