



LLCs AND CHARGING ORDER PROTECTION

Why Single Member LLCs Are Not Always Enough

Many people operate their business out of a limited liability company (“LLC”) or hold investment real estate in a LLC in order to protect them from liability associated with the LLC’s business or property. While this protects the LLC owner from personal liability associated with the activities or property of the LLC, a LLC with only one owner (referred to as a single-member LLC) is not protected from the creditors of its owner.

Overview

- ❑ Florida law generally protects the assets of a LLC from the LLC owner’s creditors by limiting creditors to obtaining a “charging order” against the owner’s interest in the LLC.
- ❑ A charging order is a weak creditor remedy, as it only allows a creditor to collect against the owner’s share of LLC distributions if and when such distributions are made.
- ❑ A charging order does not allow the creditor to force distributions from the LLC, force the owner to sell his or her LLC interest, or obtain ownership of the LLC interest.
- ❑ A creditor of the owner of a single-member LLC, however, is not limited to a charging order under Florida law, and may foreclose against the LLC and ultimately obtain the LLC assets.

Example

- ❑ The owner of a single-member LLC that owns a valuable office building causes a car accident that injures several others.
- ❑ The accident victims win a judgment against the LLC owner in excess of the owner’s insurance policy limits and look to the owner’s personal assets to satisfy their judgment.
- ❑ Because the LLC has only one owner, the accident victims are able to foreclose against the LLC and ultimately sell the office building to satisfy their judgment.
- ❑ If the LLC had more than one owner (referred to as a multi-member LLC), the creditors would have been limited to a charging order and would not have been able to reach the office building.

Potential Solution

- ❑ Depending on the circumstances, it may be wise to covert a single-member LLC to a multi-member LLC.
- ❑ Conversion to a multi-member LLC protects the LLC assets from potential creditor claims against the LLC owners by limiting creditors to obtaining charging orders against their interests.
- ❑ A single-member LLC can be easily converted to a multi-member LLC by adding another owner.
- ❑ The additional owner can be a child or other family member, and that person need only be given a small ownership interest in the LLC.
- ❑ The additional owner can also be an irrevocable trust, which can be used to transfer portions of the LLC interests out of the owner’s taxable estate and coordinate with the owner’s overall estate plan.
- ❑ Adding another LLC owner should be done with an operating agreement and updates to the LLC records.