

1 A bill to be entitled

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

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

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

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

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

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

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

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

47 608.433 Right of assignee to become member.—

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

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

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obligations of the assignee's assignor to make and return contributions as provided in s. 608.4211 and wrongful distributions as provided in s. 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or the operating agreement.

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

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

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

(c) This chapter does not deprive any member or member's assignee of the benefit of any exemption law ~~laws~~ applicable to

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85 the member's limited liability company interest or the
86 assignee's rights to distributions from the limited liability
87 company.

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

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

110 (7) In the case of a limited liability company having only
111 one member, if the court orders foreclosure sale of a judgment
112 debtor's interest in the limited liability company or of a

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113 charging order lien against the sole member of the limited
114 liability company pursuant to subsection (6):

115 (a) The purchaser at the court-ordered foreclosure sale
116 obtains the member's entire limited liability company interest,
117 not merely the member's transferable interest;

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

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

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

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