

1 A bill to be entitled

2 An act relating to limited liability companies, amending § 608.433,
3 Florida Statutes, to provide that a charging order is the sole and
4 exclusive remedy available to a judgment creditor of a member of a
5 limited liability company having more than one member; providing an
6 effective date.

7 WHEREAS, the Florida Supreme Court in *Olmstead v.*
8 *Federal Trade Comm’n*, Case No. SC08-1009 (June 24,
9 2010), held that with respect to a Florida single member
10 limited liability company (“LLC”), a “charging order” is
11 not the exclusive remedy available to a creditor holding a
12 judgment against the sole member; and

13 WHEREAS, a charging order represents a lien entitling a
14 judgment creditor to receive distributions from the LLC or
15 the partnership that otherwise would be payable to the
16 member or partner who is the judgment debtor; and,

17 WHEREAS, the dissenting members of the Court in
18 *Olmstead* expressed concern that the holding of the
19 majority is not limited in effect to single member LLCs,
20 and expressed a desire for the Legislature to clarify the
21 law in this area; and,

22 WHEREAS, the Legislature finds that due to the
23 perceived uncertainty of the breadth of the Court’s
24 holding in *Olmstead*, businesses and investors situated in
25 Florida may be persuaded to form LLCs in jurisdictions in
26 which charging orders are the exclusive remedy available
27 to judgment creditors of members of multiple member
28 LLCs; and,

WHEREAS, the resulting revision of s. 608.433, Florida Statutes, clarifies existing law so that the holding in *Olmstead* does not extend to members of multiple member LLCs organized under Florida law; and,

WHEREAS, the resulting clarification is remedial and will extend to all multiple member LLCs created before, on, or after the date this Bill becomes law.

NOW, THEREFORE,

Be it enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of Section 608.433, Florida Statutes, is amended, and Subsection (5) is added to that Section.

608.433 Right of assignee to become member

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

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning member under the articles of organization, the operating agreement, and this chapter. An assignee who becomes a member also is liable for the 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 ss. 608.4211, 608.4228, and 608.426.

(4) (a) On application to a court of competent jurisdiction by any judgment creditor of a member or a member's transferee, the court may enter a

59 charging order against the transferable interest of the judgment debtor for the
60 unsatisfied amount of the judgment.~~charge the limited liability company~~
61 ~~membership interest of the member with payment of the unsatisfied amount of the~~
62 ~~judgment with interest. To the extent so charged, the judgment creditor has only the rights of~~
63 ~~an assignee of such interest. This chapter does not deprive any member of the benefit of any~~
64 ~~exemption laws applicable to the member's interest.~~

65 (b) To the extent so charged, the judgment creditor has only the
66 rights of an assignee of the transferable interest.

67 (c) This chapter does not deprive any member of the benefit of any
68 exemption laws applicable to the member's interest.

69 (5) With respect to a limited liability company having more than one
70 member, this section provides the sole and exclusive remedy by which a person
71 seeking to enforce a judgment against a member or member's transferee may, in the
72 capacity of a judgment creditor, satisfy the judgment from the judgment debtor's
73 transferable interest in the limited liability company. Foreclosure on the judgment
74 debtor's interest, and all other remedies to give effect to the charging order,
75 including but not limited to, the appointment of a receiver or a court order for
76 directions, accounts, and inquiries that the judgment debtor might have made, are
77 not available to the judgment creditor attempting to satisfy the judgment out of the
78 judgment debtor's transferable interest, and may not be ordered by a court.

79 Section 2. This Act is a clarification of existing law, and shall take effect
80 upon becoming law.
81

9728500_v1