



## Legal Note – Choosing the Right LLC #2

---

Last month we discussed the lack of public awareness regarding the often substantial differences between the LLCs offered by the various states. The important distinction in protection lies in the relative strength of the applicable “charging order” statutory language.

The charging order concept was first proposed in 19<sup>th</sup> century England to protect investors from debtor partners. The concept was imported to the U.S. in the 1914 Uniform Partnership Act (“UPA”). From its inception, the concept limited the legal remedies available to a creditor attempting to reach the debtor’s partnership interest. Many states adopted (some or all of) the Uniform Partnership Act to restrict creditors to a “charging order” on distributions payable to the debtor partner. The UPA therefore established the first U.S. protection of partnership equity to shield owners from the personal liabilities of their partners.

Several additional “uniform” acts have been drafted over the last century to provide a suggested format for the codification of partnership and LLC law. Although the charging order concept is included in the UPA and later Uniform Limited Partnership Act, the strength of the protection described in each act varies dramatically. The preferable statutory language has generally developed from the Revised Uniform Limited Partnership Act of 1976 (“RULPA”). The applicable provision limits any creditor of a member to solely a charging order on the debtor’s membership interest. Unfortunately, several states have failed to implement such language and actually allow for attachment and foreclosure of the LLC interest by a creditor.

Some of the states which have adopted charging order statutes similar to the RULPA provision include Arizona, Delaware, New Jersey, Connecticut, Minnesota and Nevada. Note, however, that many state courts have independently chipped away at the applicable statutory protections. Clients should therefore always consult an attorney familiar with the protections desired.