



Legal Note – Single Member LLCs

Several states (including Florida) provide statutory creditor protection to single member LLCs. Such protections limit the legal remedies available to creditors attempting to attach equity in the LLC. Creditors are restricted to pursuing only the legal remedy known as a “charging order” against the debtor’s interest in the LLC. The charging order remedy generally limits the creditor to LLC distributions. The creditor may not therefore generally attach voting rights or force liquidation of the LLC.

The U.S. Bankruptcy Court has, however, apparently compromised the charging order protection for single member LLCs. The Court stated that a bankruptcy trustee may transfer the interest of the single bankrupt member and therefore liquidate the assets of the LLC to pay the debts of the member.

The Bankruptcy Court based its decision to disregard state statutory protections of the single member LLC on a historical partnership principle. The court determined that the charging order was historically established to protect the partnership and partners other than the debtor. In other words, the partnership charging order protection was implemented to shield partnership assets and the other non-debtor partners. In so ruling, the court negated the state charging order protections over solo LLCs in the bankruptcy context. The bankruptcy court therefore apparently invalidated state protections afforded single member LLCs (at least for bankruptcy purposes) even though the applicable state statutes specifically entitle single member LLCs to charging order protection.

In light of the bankruptcy court’s decision, most practitioners now recommend that LLCs have more than one member to improve the likelihood of charging order protection.