



## Legal Note: The Death of the Single Member LLC in Florida

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Several states (including Florida) provide statutory creditor protection to single member LLCs. Such protections generally limit the legal remedies available to creditors seeking LLC equity. Creditors are generally restricted to 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, however, compromised the charging order protection for single member LLCs. In *re Albright*, the Bankruptcy Court in Colorado ruled in 2003 that a bankruptcy trustee may transfer the interest of a single bankrupt member to creditors of the debtor. The creditors could 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 Colorado’s 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 statute specifically entitles single member LLCs to charging order protection.

Outside the bankruptcy setting (where state courts are more tightly bound to limit legislation from the bench), the Florida Supreme Court last week invalidated the prior revision to the Florida Statutes protecting single member LLCs. The case involved a judgment the FTC won against defendants, Shawn Olmstead and Julie Connell. The FTC sought single member LLC interests as part of a collection action to recover more than \$10,000,000 in restitution to victims of the defendants’ credit card scam. The Florida Supreme Court ruled that a debtor may be forced to surrender equity in a single member LLC, to satisfy an outstanding judgment.

Similar to the bankruptcy court in *Albright*, the Florida Supreme Court disregarded the statutory language permitting single member LLCs in Florida. The Court did so by analogizing LLC equity to freely transferable (exposed) corporate stock. The Court further supported the unraveling of the solo LLC by citing the omission by the Florida legislature of the word “exclusive” in the statutory language. In the absence of statutory language limiting creditor remedies against LLC members “exclusively” to the charging order, the Court took the liberty of simply ignoring the basic difference between corporations and LLCs. Such broadening of creditor rights beyond the charging order may actually expose all Florida LLC interests to foreclosure. The case is yet another example of legislation by judicial edict, to permit creditors access to the assets of a bad actor. Although well intended, the case will eliminate legitimate planning opportunities and force existing Florida LLC owners to seek a more protective entity. Chief Justice Lewis correctly noted in his dissenting opinion that “...the majority today steps across the line of statutory interpretation and reaches far into the realm of rewriting this Legislative Act.”

The decision will generally eliminate any advantage of the Florida single member LLC (over the corporation). Moreover, the tenure of the ruling suggests that the Court may later allow foreclosure of equity in multiple member LLCs. The single member LLC will, however, likely remain protected in the few states which have adopted more meticulously drafted legislation. The law of Delaware, for example, specially limits the creditor of an LLC member to a charging order, even if the LLC is held by a single member. Solo LLCs should therefore convert to a more protective jurisdiction or add at least one member.