



PROTECTING ASSETS WITH OHIO LLCs

Amendments to Ohio's limited liability company ("LLC") statutes have taken effect to address some recent concerns with the asset protection features of an Ohio LLC. The amendments were designed to offer more certainty about the level of asset protection an Ohio LLC provides against claims by creditors of an LLC's member.

CHARGING ORDER REMEDY

Ohio Revised Code Section 1705.19 has been amended to provide that a creditor seeking recourse against a debtor that owns all or a portion of the membership interest of an Ohio LLC is limited to one remedy: a charging order against the debtor/member's interest in his or her LLC. A charging order effectively works like wage garnishment. A charging order is awarded by a court and grants the creditor the right to take LLC distributions that otherwise would go to the member.

The debtor/member's creditor may not (1) seek to take possession of the member's membership interest in the LLC; (2) seek to take possession of any assets held by the LLC; or (3) exercise any management rights enjoyed by the member. As long as the LLC follows its governance formalities, the LLC's assets should remain entirely out of the reach of a member's creditors.

THE NEED FOR CHANGE

This amendment to clarify the reach of a member's creditor came from concerns

created by a 2010 Florida Supreme Court decision. In *Olmstead v. FTC*, 44 So.2d. 67 (Fla. 2010), the Florida Supreme Court had to decide whether a charging order would be the sole remedy available to the creditor of a member of a Florida LLC. After analyzing Florida's limited liability company statutes, the Florida Supreme Court decided that the charging order was not the creditor's sole remedy. That decision opened the door for the creditor to take possession of the member's LLC interest in his single-member limited liability company. Permitting the creditor to seize the debtor/member's LLC interest would allow the creditor to have full control and access to the assets of the LLC.

Following the *Olmstead* case, some commenters cautioned against using Ohio LLCs for asset protection due to similarities between the LLC statutes of Florida and Ohio and concerns that an Ohio court could come to the same conclusion as the *Olmstead* court. If an Ohio court followed the *Olmstead* decision, creditors of LLC members could seek remedies beyond a mere charging order, which significantly reduces the asset protection feature of an Ohio LLC.

Due to concerns about the uncertainty of the Ohio LLC as an asset protection shield, attorneys began advising clients to form Delaware LLCs (or even to convert existing Ohio LLCs into Delaware LLCs). Delaware's LLC statute protected LLC

assets by expressly limiting a member's creditor to seeking a charging order against the member's LLC interest.

OHIO CATCHES UP TO DELAWARE

With the amendment to Ohio's LLC statute, Ohio now mimics the limitations in place in Delaware. Practitioners considering the use of an entity to shield assets from creditors no longer need to look outside the State of Ohio when deciding where to form an LLC if the concern is about protecting the assets from the client's future creditors. Ohio remains a viable option.

Please note: The asset protections discussed above may only protect assets from creditor claims that arise after the assets are contributed to an Ohio LLC. If creditors or potential creditors exist today, you should seek the guidance of an attorney to evaluate whether transferring assets to an Ohio LLC will provide the desired level of protection or whether the contribution may trigger concerns under Ohio's fraudulent transfer laws.

ADDITIONAL INFORMATION

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