INDEX TO SELECTED FLORIDA STATUTES AND CASE LAW

1. Article X, Section 4 of the Florida Constitution. Homestead; Exemptions.
2. Fla. Stat. § 732.401 - Descent of homestead (effective until 9/30/2010).
3. Fla. Stat. § 732.401 - Descent of homestead (effective 10/01/2010).
4. Fla. Stat. § 732.4015 - Devise of homestead (effective until 9/30/2010).
5. Fla. Stat. § 732.4015 - Devise of homestead (effective 10/01/2010).
6. Fla. Stat. § 732.4017 - Inter vivos transfer of homestead property (effective 10/01/2010).
7. Fla. Stat. § 222.11 - Exemption of wages from garnishment (effective until 9/30/2010).
8. Fla. Stat. § 222.11 - Exemption of wages from garnishment (effective 10/01/2010).
9. Fla. Stat. § 222.13 - Life insurance policies; disposition of proceeds.
10. Fla. Stat. § 222.14 - Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.
11. Fla. Stat. § 222.16 - Wages or unemployment compensation payments so paid not subject to administration.
12. Fla. Stat. § 222.21 - Exemption of pension money and certain tax-exempt funds or accounts from legal processes.
13. Fla. Stat. § 222.22 - Exemption of assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts from legal process.
14. Fla. Stat. §§ 736.0501 - 736.0505 - Addresses rights of creditors to assets held in trust.
15. Fla. Stat. § 608.433 - Right of assignee to become member.
16. Fla. Stat. § 620.1703 - Rights of creditor of partner or transferee.
17. Fla. Stat. § 620.8504 - Partner's transferable interest subject to charging order.
18. *Olmstead v. Federal Trade Commission*, No. SC08-1009 (Fla. 2010).

SECTION 4. Homestead; exemptions.--

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

History.--Am. H.J.R. 4324, 1972; adopted 1972; Am. H.J.R. 40, 1983; adopted 1984; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

West's F.S.A. § 732.401

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 732. Probate Code: Intestate Succession and Wills (Refs & Annos)
Part IV. Exempt Property and Allowances (Refs & Annos)
732.401. Descent of homestead

* Effective until 9/30/2010

(1) If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) Subsection (1) shall not apply to property that the decedent and the surviving spouse owned as tenants by the entirety.

CREDIT(S)

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 17. Amended by Laws 2001, c. 2001-226, § 37, eff. Jan. 1, 2002; Laws 2007, c. 2007-74, § 12, eff. July 1, 2007.

West's F.S.A. § 732.401

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 732. Probate Code: Intestate Succession and Wills (Refs & Annos)
Part IV. Exempt Property and Allowances (Refs & Annos)

➧732.401. Descent of homestead

* Effective 10/1/2010

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(a) The right of election may be exercised:

1. By the surviving spouse; or

2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or guardian of the property for approval to make the election tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last.

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE TO TAKE A ONE-HALF INTEREST OF DECEDENT'S INTEREST IN HOMESTEAD PROPERTY

STATE OF.....

COUNTY OF.....

1. The decedent, ..., died on ..... On the date of the decedent's death, The decedent was married to ....., who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, that real property being in .....County, Florida, and described as: ...(description of homestead property)....

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me this ... day of ...(month)..., ...(year)..., by ... (affiant)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

...(Type of Identification Produced)...

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or joint tenancy with rights of survivorship.

CREDIT(S)

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 17. Amended by Laws 2001, c. 2001-226, § 37, eff. Jan. 1, 2002; Laws 2007, c. 2007-74, § 12, eff. July 1, 2007; Laws 2010, c. 2010-132, § 7, eff. Oct. 1, 2010.

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

Laws 2001, c. 2001-226, § 37, effective Jan. 1, 2002, at the end of subsec. (1), inserted "per stirpes"; and rewrote subsec. (2), which formerly read:

"(2) If the decedent was domiciled in Florida and resided on real property that the decedent and the surviving spouse owned as tenants by the entirety, the real property shall not be homestead property."

Laws 2007, c. 2007-74, § 12, in subsec. (1), inserted "one or more" following "survived by a spouse and", and substituted "descendants" for "lineal descendants" throughout.

Laws 2010, c. 2010-132, § 7, rewrote this section, which formerly read:

"(1) If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

"(2) Subsection (1) shall not apply to property that the decedent and the surviving spouse owned as tenants by the entirety."

West's F.S.A. § 732.4015

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 732. Probate Code: Intestate Succession and Wills (Refs & Annos)
Part IV. Exempt Property and Allowances (Refs & Annos)
➡732.4015. Devise of homestead

* Effective until 9/30/2010

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor of a trust described in s. 733.707(3) that is evidenced by a written instrument which is in existence at the time of the grantor's death as if the interest held in trust was owned by the grantor.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

CREDIT(S)

Laws 1974, c. 74-106, § 1; Fla.St.1974, Supp. § 732.516; Laws 1975, c. 75-220, §§ 18, 30; Laws 1992, c. 92-200, § 16. Amended by Laws 1997, c. 97-102, § 959, eff. July 1, 1997; Laws 2001, c. 2001-226, § 38, eff. Jan. 1, 2002; Laws 2007, c. 2007-74, § 13, eff. July 1, 2007.

West's F.S.A. § 732.4015

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 732. Probate Code: Intestate Succession and Wills (Refs & Annos)
Part IV. Exempt Property and Allowances (Refs & Annos)

➡732.4015. Devise of homestead

* Effective on 10/1/2010

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor of a trust described in s. 733.707(3) that is evidenced by a written instrument which is in existence at the time of the grantor's death as if the interest held in trust was owned by the grantor.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

(3) If an interest in homestead has been devised to the surviving spouse as authorized by law and the constitution, and the surviving spouse's interest is disclaimed, the disclaimed interest shall pass in accordance with chapter 739.

CREDIT(S)

Laws 1974, c. 74-106, § 1; Fla.St.1974, Supp. § 732.516; Laws 1975, c. 75-220, §§ 18, 30; Laws 1992, c. 92-200, § 16. Amended by Laws 1997, c. 97-102, § 959, eff. July 1, 1997; Laws 2001, c. 2001-226, § 38, eff. Jan. 1, 2002; Laws 2007, c. 2007-74, § 13, eff. July 1, 2007; Laws 2010, c. 2010-132, § 8, eff. Oct. 1, 2010.

West's F.S.A. § 732.4017

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 732. Probate Code: Intestate Succession and Wills (Refs & Annos)
Part IV. Exempt Property and Allowances (Refs & Annos)

➧732.4017. Inter vivos transfer of homestead property

(1) If the owner of homestead property transfers an interest in that property, including a transfer in trust, with or without consideration, to one or more persons during the owner's lifetime, the transfer is not a devise for purposes of s. 731.201(10) or s. 732.4015, and the interest transferred does not descend as provided in s. 732.401 if the transferor fails to retain a power, held in any capacity, acting alone or in conjunction with any other person, to revoke or revest that interest in the transferor.

(2) As used in this section, the term "transfer in trust" refers to a trust under which the transferor of the homestead property, alone or in conjunction with another person, does not possess a right of revocation as that term is defined in s. 733.707(3)(e). A power possessed by the transferor which is exercisable during the transferor's lifetime to alter the beneficial use and enjoyment of the interest within a class of beneficiaries identified only in the trust instrument is not a right of revocation if the power may not be exercised in favor of the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate or exercised to discharge the transferor's legal obligations. This subsection does not create an inference that a power not described in this subsection is a power to revoke or revest an interest in the transferor.

(3) The transfer of an interest in homestead property described in subsection (1) may not be treated as a devise of that interest even if:

(a) The transferor retains a separate legal or equitable interest in the homestead property, directly or indirectly through a trust or other arrangement such as a term of years, life estate, reversion, possibility of reverter, or fractional fee interest;

(b) The interest transferred does not become a possessory interest until a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, the death of the transferor; or

(c) The interest transferred is subject to divestment, expiration, or lapse upon a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, survival of the transferor.

(4) It is the intent of the Legislature that this section clarify existing law.

CREDIT(S)

Added by Laws 2010, c. 2010-132, § 9, eff. Oct. 1, 2010.

West's F. S. A. § 732.4017, FL ST § 732.4017

Current through Chapter 274 (End) of the 2010 Second Regular Session of the Twenty-First Legislature

END OF DOCUMENT

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.11 Exemption of wages from garnishment.--

(1) As used in this section, the term:

(a) "Earnings" includes compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus.

(b) "Disposable earnings" means that part of the earnings of any head of family remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) "Head of family" includes any natural person who is providing more than one-half of the support for a child or other dependent.

(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to $500 a week are exempt from attachment or garnishment.

(b) Disposable earnings of a head of a family, which are greater than $500 a week, may not be attached or garnished unless such person has agreed otherwise in writing. In no event shall the amount attached or garnished exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(c) Disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(3) Earnings that are exempt under subsection (2) and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

History.--s. 1, ch. 2065, 1875; RS 2008; GS 2530; RGS 3885; CGL 5792; s. 1, ch. 81-301; s. 6, ch. 85-272; s. 2, ch. 93-256.

West's F.S.A. § 222.11

West's Florida Statutes Annotated Currentness
Title XV. Homestead and Exemptions (Chapters 222-226)
Chapter 222. Method of Setting Apart Homestead and Exemptions (Refs & Annos)
➡222.11. Exemption of wages from garnishment

(1) As used in this section, the term:

(a) "Earnings" includes compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus.

(b) "Disposable earnings" means that part of the earnings of any head of family remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) "Head of family" includes any natural person who is providing more than one-half of the support for a child or other dependent.

(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to $750 a week are exempt from attachment or garnishment.

(b) Disposable earnings of a head of a family, which are greater than $750 a week, may not be attached or garnished unless such person has agreed otherwise in writing. The agreement to waive the protection provided by this paragraph must:

1. Be written in the same language as the contract or agreement to which the waiver relates;

2. Be contained in a separate document attached to the contract or agreement; and

3. Be in substantially the following form in at least 14-point type:

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

...(Consumer's Signature).....(Date Signed)...

I have fully explained this document to the consumer.

...(Creditor's Signature).....(Date Signed)...

The amount attached or garnished may not exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(c) Disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(3) Earnings that are exempt under subsection (2) and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

CREDIT(S)

Laws 1875, c. 2065, § 1; Rev.St.1892, § 2008; Gen.St.1906, § 2530; Rev.Gen.St.1920, § 3885; Com.Gen.Laws 1927, § 5792; Laws 1981, c. 81-301, § 1; Laws 1985, c. 85-272, § 6. Amended by

Laws 1993, c. 93-256, § 2, eff. Oct. 1, 1993; Laws 2010, c. 2010-97, § 1, eff. Oct. 1, 2010.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.13 Life insurance policies; disposition of proceeds.--

(1) Whenever any person residing in the state shall die leaving insurance on his or her life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

(2) Payments as herein directed shall, in every such case, discharge the insurer from any further liability under the policy, and the insurer shall in no event be responsible for, or be required to see to, the application of such payments.

History.--s. 1, ch. 1864, 1872; RS 2347; s. 1, ch. 4555, 1897; s. 1, ch. 5165, 1903; GS 3154; RGS 4977; CGL 7065; s. 1, ch. 29861, 1955; s. 1, ch. 59-333; s. 1, ch. 63-230; s. 1, ch. 70-376; s. 51, ch. 71-355; s. 1202, ch. 95-147.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.14 Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.--The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

History.--s. 1, ch. 10154, 1925; CGL 7066; s. 1, ch. 78-76.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.16 Wages or unemployment compensation payments so paid not subject to administration.--Any wages, travel expenses, or unemployment compensation payments so paid under the authority of s. 222.15 shall not be considered as assets of the estate and subject to administration; provided, however, that the travel expenses so exempted from administration shall not exceed the sum of $300.

History.--s. 2, ch. 7366, 1917; RGS 4980; CGL 7069; s. 2, ch. 20407, 1941; s. 2, ch. 63-165.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.--

(1) Money received by any debtor as pensioner of the United States within 3 months next preceding the issuing of an execution, attachment, or garnishment process may not be applied to the payment of the debts of the pensioner when it is made to appear by the affidavit of the debtor or otherwise that the pension money is necessary for the maintenance of the debtor's support or a family supported wholly or in part by the pension money. The filing of the affidavit by the debtor, or the making of such proof by the debtor, is prima facie evidence; and it is the duty of the court in which the proceeding is pending to release all pension moneys held by such attachment or garnishment process, immediately, upon the filing of such affidavit or the making of such proof.

(2)(a) Except as provided in paragraph (d), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:

1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;

2. Maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable; or

3. Not maintained in accordance with a plan or governing instrument described in subparagraph 1. or subparagraph 2. if the person claiming exemption under this paragraph proves by a preponderance of the evidence that the fund or account is maintained in accordance with a plan or governing instrument that:

a. Is in substantial compliance with the applicable requirements for tax exemption under s. 401 (a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended; or

b. Would have been in substantial compliance with the applicable requirements for tax exemption under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, but for the negligent or wrongful conduct of a person or persons other than the person who is claiming the exemption under this section.

(b) It is not necessary that a fund or account that is described in paragraph (a) be maintained in accordance with a plan or governing instrument that is covered by any part of the Employee Retirement Income Security Act for money or assets payable from or any interest in that fund or

account to be exempt from claims of creditors under that paragraph.

(c) Any money or other assets that are exempt from claims of creditors under paragraph (a) do not cease to qualify for exemption by reason of a direct transfer or eligible rollover that is excluded from gross income under s. 402(c) of the Internal Revenue Code of 1986.

(d) Any fund or account described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified domestic relations order or from the claims of a surviving spouse pursuant to an order determining the amount of elective share and contribution as provided in part II of chapter 732. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the Department of Revenue, of the alternate payee. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in s. 414(p) of the Internal Revenue Code of 1986.

(e) This subsection applies to any proceeding that is filed on or after the effective date of this act.

History.--s. 1, ch. 87-375; s. 1, ch. 98-159; s. 25, ch. 99-8; s. 5, ch. 2005-82; s. 1, ch. 2005-101; s. 1, ch. 2007-74.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XV	Chapter 222	View Entire Chapter
HOMESTEAD AND EXEMPTIONS	METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS	

222.22 Exemption of assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts from legal process.--

(1) Moneys paid into or out of, the assets of, and the income of any validly existing qualified tuition program authorized by s. 529 of the Internal Revenue Code of 1986, as amended, including, but not limited to, the Florida Prepaid College Trust Fund advance payment contracts under s. 1009.98 and Florida Prepaid College Trust Fund participation agreements under s. 1009.981, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of or claimant against any program participant, purchaser, owner or contributor, or program beneficiary.

(2) Moneys paid into or out of, the assets of, and the income of a health savings account or medical savings account authorized under ss. 220 and 223 of the Internal Revenue Code of 1986, as amended, are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary.

(3) Moneys paid into or out of, the assets of, and the income of any Coverdell education savings account, also known as an educational IRA, established or existing in accordance with s. 530 of the Internal Revenue Code of 1986, as amended, are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary.

(4)(a) Moneys paid into or out of, the assets of, and the income of any hurricane savings account established by an insurance policyholder for residential property in this state equal to twice the deductible sum of such insurance to cover an insurance deductible or other uninsured portion of the risks of loss from a hurricane, rising flood waters, or other catastrophic windstorm event are not liable to attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any account participant, purchaser, owner or contributor, or account beneficiary.

(b) As used in this subsection, the term "hurricane savings account" means an account established by the owner of residential real estate in this state, which meets the requirements of homestead exemption under s. 4, Art. X of the State Constitution, who specifies that the purpose of the account is to cover the amount of insurance deductibles and other uninsured portions of risks of loss from hurricanes, rising flood waters, or other catastrophic windstorm events.

(c) This subsection shall take effect only when the federal government provides tax-exempt or tax-deferred status to a hurricane savings account, disaster savings account, or other similar account created to cover an insurance deductible or other uninsured portion of the risks of loss from a hurricane, rising flood waters, or other catastrophic windstorm event.

History.--s. 2, ch. 88-313; s. 2, ch. 89-296; s. 5, ch. 91-429; s. 2, ch. 98-159; s. 50, ch. 98-421; s. 2, ch. 99-220; s. 926, ch. 2002-387; s. 2, ch. 2005-101.

West's Florida Statutes Annotated Currentness
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 736. Florida Trust Code (Refs & Annos)
➡ Part V. Creditors' Claims; Spendthrift and Discretionary Trusts

736.05. Repealed by Laws 1974, c. 74-106, § 3

736.0501. Rights of beneficiary's creditor or assignee

Except as provided in s. 736.0504, to the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

736.0502. Spendthrift provision

(1) A spendthrift provision is valid only if the provision restrains both voluntary and involuntary transfer of a beneficiary's interest. This subsection does not apply to any trust the terms of which are included in an instrument executed before the effective date of this code.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before receipt of the interest or distribution by the beneficiary.

(4) A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment.

736.0503. Exceptions to spendthrift provision

(1) As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or any other state.

(2) To the extent provided in subsection (3), a spendthrift provision is unenforceable against:

(a) A beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance.

(b) A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust.

(c) A claim of this state or the United States to the extent a law of this state or a federal law so provides.

(3) Except as otherwise provided in this subsection and in s. 736.0504, a claimant against which a spendthrift provision may not be enforced may obtain from a court, or pursuant to the Uniform Interstate Family Support Act, [FN1] an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. Notwithstanding this subsection, the remedies provided in this subsection apply to a claim by a beneficiary's child, spouse, former spouse, or a judgment creditor described in paragraph (2)(a) or paragraph (2)(b) only as a last resort upon an initial showing that traditional methods of

enforcing the claim are insufficient.

[FN1] Section 88.0011 et seq.

736.0504. Discretionary trusts; effect of standard

(1) As used in this section, the term "discretionary distribution" means a distribution that is subject to the trustee's discretion whether or not the discretion is expressed in the form of a standard of distribution and whether or not the trustee has abused the discretion.

(2) Whether or not a trust contains a spendthrift provision, if a trustee may make discretionary distributions to or for the benefit of a beneficiary, a creditor of the beneficiary, including a creditor as described in s. 736.0503(2), may not:

(a) Compel a distribution that is subject to the trustee's discretion; or

(b) Attach or otherwise reach the interest, if any, which the beneficiary might have as a result of the trustee's authority to make discretionary distributions to or for the benefit of the beneficiary.

(3) If the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee.

(4) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

736.0505. Creditors' claims against settlor

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) The property of a revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

(2) For purposes of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the

greater of the amount specified in:

1. Section 2041(b)(2) [FN1] or s. 2514(e); [FN2] or

2. Section 2503(b) [FN3] and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b) [FN3],

of the Internal Revenue Code of 1986, as amended.

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, [FN4] as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, [FN5] as amended, has been made; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a),

shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XXXVI BUSINESS ORGANIZATIONS | Chapter 608 LIMITED LIABILITY COMPANIES | View Entire Chapter

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) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest.

History.--s. 34, ch. 93-284; s. 56, ch. 97-102; s. 1, ch. 99-315.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XXXVI BUSINESS ORGANIZATIONS | Chapter 620 PARTNERSHIP LAWS | View Entire Chapter

620.1703 Rights of creditor of partner or transferee.--

(1) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the partnership interest of the partner or transferable interest of a transferee with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee of the partnership interest.

(2) This act shall not deprive any partner or transferee of the benefit of an exemption law applicable to the partner's partnership or transferee's transferable interest.

(3) This section provides the exclusive remedy which a judgment creditor of a partner or transferee may use to satisfy a judgment out of the judgment debtor's interest in the limited partnership or transferable interest. Other remedies, including foreclosure on the partner's interest in the limited partnership or a transferee's transferable interest and a court order for directions, accounts, and inquiries that the debtor general or limited partner might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited partnership and may not be ordered by a court.

History.--s. 17, ch. 2005-267.

Select Year: 2009 Go

The 2009 Florida Statutes

Title XXXVI BUSINESS ORGANIZATIONS | Chapter 620 PARTNERSHIP LAWS | View Entire Chapter

620.8504 Partner's transferable interest subject to charging order.--

(1) Upon application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History.--s. 13, ch. 95-242.

--- So.3d ----, 2010 WL 2518106 (Fla.), 2010-1 Trade Cases P 77,079, 35 Fla. L. Weekly S357

Briefs and Other Related Documents
Judges and Attorneys
NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of Florida.
Shaun **OLMSTEAD**, et al., Appellants,
v.
FEDERAL TRADE COMMISSION, Appellee.

No. SC08-1009.
June 24, 2010.

Background: The United States Court of Appeals for the Eleventh Circuit, 528 F.3d 1310, 2008-1 Trade Cases P 76,171, 22 Fla. L. Weekly Fed. C 756, certified a question concerning the rights of a judgment creditor regarding the respective ownership interests of judgment debtors in certain single-member limited liability companies (LLCs).

Holding: The Supreme Court, Canady, J., held that court could order judgment debtor to surrender all right, title, and interest in debtor's single-member LLC.

Question answered.

Lewis, J., dissented and filed opinion in which Polston, J., joined.

West Headnotes

[1] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek6 k. Nature and Purpose of Entity in General. Most Cited Cases

A "limited liability company (LLC)" is a business entity originally created to provide tax benefits akin to a partnership and limited liability akin to the corporate form.

[2] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

In addition to eligibility for tax treatment like that afforded partnerships, "limited liability companies (LLCs)" are characterized by restrictions on the transfer of ownership rights that are related to the restrictions applicable in the partnership context; in particular, the transfer of management rights in an LLC generally is restricted.

[3] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek31 k. Rights of Creditors. Most Cited Cases

The "limited liability company (LLC) charging order remedy" is a remedy derived from the charging

order remedy created for the personal creditors of partners and affords a judgment creditor access to a judgment debtor's rights to profits and distributions from the business entity in which the debtor has an ownership interest.

[4] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek24 Rights and Liabilities of Members or Stockholders
241Ek25 k. In General. Most Cited Cases

A "limited liability company (LLC)" is a type of corporate entity, and an ownership interest in an LLC is personal property that is reasonably understood to fall within the scope of corporate stock.

[5] KeyCite Citing References for this Headnote

117T Debtor and Creditor
117Tk11 k. Creditors' Suit. Most Cited Cases

The general rule is that where one has any interest in property which he may alien or assign, that interest, whether legal or equitable, is liable for the payment of his debts.

[6] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

The sole member in a single-member limited liability company (LLC) may freely transfer the owner's entire interest in the LLC.

[7] KeyCite Citing References for this Headnote

241E Limited Liability Companies
241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

Court could order a judgment debtor to surrender all right, title, and interest in the debtor's single-member LLC to satisfy an outstanding judgment; provision authorizing the use of charging orders under the Limited Liability Company (LLC) Act was not the sole remedy for a judgment creditor against a judgment debtor's interest in a single-member LLC and did not displace the creditor's remedy under statute governing property subject to execution. Fla. Stat. § 608.433(4).

[8] KeyCite Citing References for this Headnote

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k158 k. Implied Repeal in General. Most Cited Cases

361 Statutes KeyCite Citing References for this Headnote
361V Repeal, Suspension, Expiration, and Revival
361k159 k. Implied Repeal by Inconsistent or Repugnant Act. Most Cited Cases

Repeal of a statute by implication is not favored and will be upheld only where irreconcilable conflict between the later statute and earlier statute shows legislative intent to repeal.

Certified Question of Law from the United States Court of Appeals for the Eleventh Circuit-Case Nos.

06-13254-DD and 03-02353-CV-T-17-TBM.
Thomas C. Little, Clearwater, FL, for Appellant.

William Blumenthal, General Counsel, John F. Daly, Deputy General Counsel and John Andrew Singer, Attorney, Federal Trade Commission, Washington, D.C., for Appellee.

Daniel S. Kleinberger, Professor, William Mitchell College of Law, St. Paul, MN, As Amicus Curiae.

CANADY, J.

*1 In this case we consider a question of law certified by the United States Court of Appeals for the Eleventh Circuit concerning the rights of a judgment creditor, the appellee Federal Trade Commission (FTC), regarding the respective ownership interests of appellants Shaun Olmstead and Julie Connell in certain Florida single-member limited liability companies (LLCs). Specifically, the Eleventh Circuit certified the following question: "Whether, pursuant to Fla. Stat. § 608.433(4), a court may order a judgment-debtor to surrender all 'right, title, and interest' in the debtor's single-member limited liability company to satisfy an outstanding judgment." *Fed. Trade Comm'n v. Olmstead*, 528 F.3d 1310, 1314 (11th Cir.2008). We have discretionary jurisdiction under article V, section 3(b)(6), Florida Constitution.

The appellants contend that the certified question should be answered in the negative because the only remedy available against their ownership interests in the single-member LLCs is a charging order, the sole remedy authorized by the statutory provision referred to in the certified question. The FTC argues that the certified question should be answered in the affirmative because the statutory charging order remedy is not the sole remedy available to the judgment creditor of the owner of a single-member limited liability company.

For the reasons we explain, we conclude that the statutory charging order provision does not preclude application of the creditor's remedy of execution on an interest in a single-member LLC. In line with our analysis, we rephrase the certified question as follows: "Whether Florida law permits a court to order a judgment debtor to surrender all right, title, and interest in the debtor's single-member limited liability company to satisfy an outstanding judgment." We answer the rephrased question in the affirmative.

I. BACKGROUND

The appellants, through certain corporate entities, "operated an advance-fee credit card scam." *Olmstead*, 528 F.3d at 1311-12. In response to this scam, the FTC sued the appellants and the corporate entities for unfair or deceptive trade practices. Assets of these defendants were frozen and placed in receivership. Among the assets placed in receivership were several single-member Florida LLCs in which either appellant Olmstead or appellant Connell was the sole member. Ultimately, the FTC obtained judgment for injunctive relief and for more than $10 million in restitution. To partially satisfy that judgment, the FTC obtained-over the appellants' objection-an order compelling appellants to endorse and surrender to the receiver all of their right, title, and interest in their LLCs. This order is the subject of the appeal in the Eleventh Circuit that precipitated the certified question we now consider.

II. ANALYSIS

In our analysis, we first review the general nature of LLCs and of the charging order remedy. We then outline the specific relevant provisions of the Florida Limited Liability Company Act (LLC Act), chapter 608, Florida Statutes (2008). Next, we discuss the generally available creditor's remedy of levy and execution under sale. Finally, we explain the basis for our conclusion that Florida law permits a court to order a judgment debtor to surrender all right, title, and interest in the debtor's single-member LLC to satisfy an outstanding judgment. In brief, this conclusion rests on the uncontested right of the owner of the single-member LLC to transfer the owner's full interest in the LLC and the absence of any basis in the LLC Act for abrogating in this context the long-standing creditor's remedy of levy and sale under execution.

A. Nature of LLCs and Charging Orders

*2 [1] [2] [3] The LLC is a business entity originally created to provide "tax benefits akin to a partnership and limited liability akin to the corporate form." *Elf Altochem North Am., Inc. v. Jaffari*, 727 A.2d 286, 287 (Del.1998). In addition to eligibility for tax treatment like that afforded partnerships, LLCs are characterized by restrictions on the transfer of ownership rights that are related to the restrictions applicable in the partnership context. In particular, the transfer of management rights in an LLC generally is restricted. This particular characteristic of LLCs underlies the establishment of the LLC charging order remedy, a remedy derived from the charging order remedy created for the personal creditors of partners. *See City of Arkansas City v. Anderson*, 242 Kan. 875, 752 P.2d 673, 681-683 (Kan.1988) (discussing history of partnership charging order remedy). The charging order affords a judgment creditor access to a judgment debtor's rights to profits and distributions from the business entity in which the debtor has an ownership interest.

B. Statutory Framework for Florida LLCs

The rules governing the formation and operation of Florida LLCs are set forth in Florida's LLC Act. In considering the question at issue, we focus on the provisions of the LLC Act that set forth the authorization for single-member LLCs, the characteristics of ownership interests, the limitations on the transfer of ownership interests, and the authorization of a charging order remedy for personal creditors of LLC members.

Section 608.405, Florida Statutes (2008), provides that "[o]ne or more persons may form a limited liability company." A person with an ownership interest in an LLC is described as a "member," which is defined in section 608.402(21) as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account." The terms "membership interest," "member's interest," and "interest" are defined as "a member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, voting rights, management rights, or any other rights under this chapter or the articles of organization or operating agreement." § 608.402(23), Fla. Stat. (2008). Section 608.431 provides that "[a]n interest of a member in a limited liability company is personal property."

Section 608.432 contains provisions governing the "[a]ssignment of member's interest." Under section 608.432(1), "[a] limited liability company interest is assignable in whole or in part except as provided in the articles of organization or operating agreement." An assignee, however, has "no right to participate in the management of the business and affairs" of the LLC "except as provided in the articles of organization or operating agreement" and upon obtaining "approval of all of the members of the limited liability company other than the member assigning a limited liability company interest" or upon "[c]ompliance with any procedure provided for in the articles of organization or operating agreement." *Id.* Accordingly, an assignment of a membership interest will not necessarily transfer the associated right to participate in the LLC's management. Such an assignment which does not transfer management rights only "entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned." § 608.432(2)(b), Fla. Stat. (2008).

*3 Section 608.433-which is headed "Right of assignee to become member"-reiterates that an assignee does not necessarily obtain the status of member. Section 608.433(1) states: "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." Section 608.433(4) sets forth the provision-mentioned in the certified question-which authorizes the charging order remedy for a judgment creditor of a member:

> On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest.

C. Generally Available Creditor's Remedy of Levy and Sale under Execution

[4] [5] Section 56.061, Florida Statutes (2008), provides that various categories of real and personal property, including "stock in corporations," "shall be subject to levy and sale under execution." A similar provision giving judgment creditors a remedy against a judgment debtor's ownership interest in a corporation has been a part of the law of Florida since 1889. *See* ch. 3917, Laws of Fla. (1889) ("That shares of stock in any corporation incorporated by the laws of this State shall be subject to levy of attachments and executions, and to sale under executions on judgments or decrees of any court in this State."). An LLC is a type of corporate entity, and an ownership interest in an LLC is personal property that is reasonably understood to fall within the scope of "corporate stock." "The general rule is that where one has any 'interest in property which he may alien or assign, that interest, whether legal or equitable, is liable for the payment of his debts.' " *Bradshaw v. Am. Advent Christian Home & Orphanage,* 145 Fla. 270, 199 So. 329, 332 (Fla.1940) (quoting *Croom v. Ocala Plumbing & Electric Co.,* 62 Fla. 460, 57 So. 243, 245 (Fla.1911)).

At no point have the appellants contended that section 56.061 does not by its own terms extend to an ownership interest in an LLC or that the order challenged in the Eleventh Circuit did not comport with the requirements of section 56.061. Instead, they rely solely on the contention that the Legislature adopted the charging order remedy as an exclusive remedy, supplanting section 56.061.

D. Creditor's Remedies Against the Ownership Interest in a Single-Member LLC

Since the charging order remedy clearly does not authorize the transfer to a judgment creditor of all an LLC member's "right, title and interest" in an LLC, while section 56.061 clearly does authorize such a transfer, the answer to the question at issue in this case turns on whether the charging order provision in section 608.433(4) always displaces the remedy available under section 56.061. Specifically, we must decide whether section 608.433(4) establishes the exclusive judgment creditor's remedy-and thus displaces section 56.061-with respect to a judgment debtor's ownership interest in a single-member LLC.

***4** [6] As a preliminary matter, we recognize the uncontested point that the sole member in a single-member LLC may freely transfer the owner's entire interest in the LLC. This is accomplished through a simple assignment of the sole member's membership interest to the transferee. Since such an interest is freely and fully alienable by its owner, section 56.061 authorizes a judgment creditor with a judgment for an amount equaling or exceeding the value of the membership interest to levy on that interest and to obtain full title to it, including all the rights of membership-that is, unless the operation of section 56.061 has been limited by section 608.433(4).

Section 608.433 deals with the right of assignees or transferees to become members of an LLC. Section 608.433(1) states the basic rule that absent a contrary provision in the articles 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." *See also* § 608.432(1)(a), Fla. Stat (2008). The provision in section 608.433(4) with respect to charging orders must be understood in the context of this basic rule.

The limitation on assignee rights in section 608.433(1) has no application to the transfer of rights in a single-member LLC. In such an entity, the set of "all members other than the member assigning the interest" is empty. Accordingly, an assignee of the membership interest of the sole member in a single-member LLC becomes a member-and takes the full right, title, and interest of the transferor-without the consent of anyone other than the transferor.

Section 608.433(4) recognizes the application of the rule regarding assignee rights stated in section 608.433(1) in the context of creditor rights. It provides a special means-i.e., a charging order-for a creditor to seek satisfaction when a debtor's membership interest is not freely transferable but is subject to the right of other LLC members to object to a transferee becoming a member and exercising the management rights attendant to membership status. *See* § 608.432(1), Fla. Stat. (2008) (setting forth general rule that an assignee "shall have no right to participate in the management of the business affairs of [an LLC]").

Section 608.433(4)'s provision that a "judgment creditor has only the rights of an assignee of [an LLC] interest" simply acknowledges that a judgment creditor cannot defeat the rights of nondebtor members of an LLC to withhold consent to the transfer of management rights. The provision does not, however, support an interpretation which gives a judgment creditor of the sole owner of an LLC less extensive rights than the rights that are freely assignable by the judgment debtor. *See In re Albright,* 291 B.R. 538, 540 (D.Colo.2003) (rejecting argument that bankruptcy trustee was only entitled to a charging order with respect to debtor's ownership interest in single-member LLC and holding that "[b]ecause there are no other members in the LLC, the entire membership interest passed to the bankruptcy estate"); *In re Modanlo,* 412 B.R. 715, 727-31 (D.Md.2006) (following reasoning of *Albright*).

***5** Our understanding of section 608.433(4) flows from the language of the subsection which limits the rights of a judgment creditor to the rights of an assignee but which does not expressly establish the charging order remedy as an exclusive remedy. The relevant question is not whether the purpose of the charging order provision-i.e., to authorize a special remedy designed to reach no further than the rights of the nondebtor members of the LLC will permit-provides a basis for implying an exception from the operation of that provision for single-member LLCs. Instead, the question is whether it is justified to infer that the LLC charging order mechanism is an *exclusive remedy.*

On its face, the charging order provision establishes a *nonexclusive* remedial mechanism. There is no express provision in the statutory text providing that the charging order remedy is the *only* remedy that can be utilized with respect to a judgment debtor's membership interest in an LLC. The operative language of section 608.433(4)-"the court may charge the [LLC] membership interest of the member with payment of the unsatisfied amount of the judgment with interest"-does not in any way suggest that the charging order is an exclusive remedy.

In this regard, the charging order provision in the LLC Act stands in stark contrast to the charging order provisions in both the Florida Revised Uniform Partnership Act, §§ 620.81001-.9902, Fla. Stat. (2008), and the Florida Revised Uniform Limited Partnership Act, §§ 620.1101-.2205, Fla. Stat. (2008). Although the core language of the charging order provisions in each of the three statutes is strikingly similar, the absence of an exclusive remedy provision sets the LLC Act apart from the other two statutes. With respect to partnership interests, the charging order remedy is established in section 620.8504, which states that it "provides the *exclusive remedy* by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership." § 620.8504(5), Fla. Stat. (2008) (emphasis added). With respect to limited partnership interests, the charging order remedy is established in section 620.1703, which states that it "provides the *exclusive remedy* which a judgment creditor of a partner or transferee may use to satisfy a judgment out of the judgment debtor's interest in the limited partnership or transferable interest." § 620.1703(3), Fla. Stat. (2008) (emphasis added).

"[W]here the legislature has inserted a provision in only one of two statutes that deal with closely related subject matter, it is reasonable to infer that the failure to include that provision in the other statute was deliberate rather than inadvertent." 2B Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 51:2 (7th ed.2008). "In the past, we have pointed to language in other statutes to show that the legislature 'knows how to' accomplish what it has omitted in the statute [we were interpreting]." *Cason v. Fla. Dep't of Mgmt. Services,* 944 So.2d 306, 315 (Fla.2006); *see also Horowitz v. Plantation Gen. Hosp. Ltd. P'ship,* 959 So.2d 176, 185 (Fla.2007); *Rollins v. Pizzarelli,* 761 So.2d 294, 298 (Fla.2000).

***6** [7] The same reasoning applies here. The Legislature has shown-in both the partnership statute and the limited partnership statute-that it knows how to make clear that a charging order remedy is an exclusive remedy. The existence of the express exclusive-remedy provisions in the partnership and limited partnership statutes therefore decisively undermines the appellants' argument that the charging order provision of the LLC Act-which does not contain such an exclusive remedy provision-should be read to displace the remedy available under section 56.061.

[8] The appellants' position is further undermined by the general rule that "repeal of a statute

by implication is not favored and will be upheld only where irreconcilable conflict between the later statute and earlier statute shows legislative intent to repeal." *Town of Indian River Shores v. Richey,* 348 So.2d 1, 2 (Fla.1977). We also have previously recognized the existence of a specific presumption against the "[s]tatutory abrogation by implication of an existing common law remedy, particularly if the remedy is long established." *Thornber v. City of Fort Walton Beach,* 568 So.2d 914, 918 (Fla.1990). The rationale for that presumption with respect to common law remedies is equally applicable to the "abrogation by implication" of a long-established statutory remedy. *See Schlesinger v. Councilman,* 420 U.S. 738, 752, 95 S.Ct. 1300, 43 L.Ed.2d 591 (1975) (" '[R]epeals by implication are disfavored,' and this canon of construction applies with particular force when the asserted repealer would remove a remedy otherwise available.") (quoting *Reg'l Rail Reorganization Act Cases,* 419 U.S. 102, 133, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974)). Here, there is no showing of an irreconcilable conflict between the charging order remedy and the previously existing judgment creditor's remedy and therefore no basis for overcoming the presumption against the implied abrogation of a statutory remedy.

Given the absence of any textual or contextual support for the appellants' position, for them to prevail it would be necessary for us to rely on a presumption contrary to the presumption against implied repeal-that is, a presumption that the legislative adoption of one remedy with respect to a particular subject abrogates by implication all existing statutory remedies with respect to the same subject. Our law, however, is antithetical to such a presumption of implied abrogation of remedies. *See Richey; Thornber; Tamiami Trails Tours, Inc. v. City of Tampa,* 159 Fla. 287, 31 So.2d 468, 471 (Fla.1947).

In sum, we reject the appellants' argument because it is predicated on an unwarranted interpretive inference which transforms a remedy that is nonexclusive on its face into an exclusive remedy. Specifically, we conclude that there is no reasonable basis for inferring that the provision authorizing the use of charging orders under section 608.433(4) establishes the sole remedy for a judgment creditor against a judgment debtor's interest in single-member LLC. Contrary to the appellants' argument, recognition of the full scope of a judgment creditor's rights with respect to a judgment debtor's freely alienable membership interest in a single-member LLC does not involve the denial of the plain meaning of the statute. Nothing in the text or context of the LLC Act supports the appellants' position.

III. CONCLUSION

***7** Section 608.433(4) does not displace the creditor's remedy available under section 56.061 with respect to a debtor's ownership interest in a single-member LLC. Answering the rephrased certified question in the affirmative, we hold that a court may order a judgment debtor to surrender all right, title, and interest in the debtor's single-member LLC to satisfy an outstanding judgment.

It is so ordered.

QUINCE, C.J., and PARIENTE, LABARGA, and PERRY, JJ., concur.
LEWIS, J., dissents with an opinion, in which POLSTON, J., concurs.

LEWIS, J., dissenting.

***7** I cannot join my colleagues in the judicial rewriting of Florida's LLC Act. Make no mistake, the majority today steps across the line of statutory interpretation and reaches far into the realm of rewriting this legislative act. The academic community has clearly recognized that to reach the result of today's majority requires a judicial rewriting of this legislative act. *See, e.g.,* Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies: Tax and Business Law,* ¶ 1.04[3][d] (2008) (discussing fact that statutes which do not contemplate issues with judgment creditors of single-member LLCs "invite *Albright-style judicial invention* "); Carter G. Bishop, *Reverse Piercing: A Single Member LLC Paradox,* 54 S.D. L.Rev. 199, 202 (2009); Larry E. Ribstein, *Reverse Limited Liability and the Design of Business Associations,* 30 Del. J. Corp. L. 199, 221-25 (2005) ("The situation in *Albright* theoretically might seem to be better redressed through explicit application of traditional state remedies than by a federal court trying to *shoehorn its preferred result into the state LLC statute.* The problem ... is that no state remedy is appropriate because the asset protection was explicitly

permitted by the applicable statute. The appropriate solution, therefore, lies in *fixing the statute.*" (emphasis supplied)); Thomas E. Rutledge & Thomas Earl Geu, *The Albright Decision-Why an SMLLC Is Not an Appropriate Asset Protection Vehicle,* Bus. Entities, Sept.-Oct.2003, at 16; Jacob Stein, *Building Stumbling Blocks: A Practical Take on Charging Orders,* Bus. Entities, Sept.-Oct.2006, at 29. (stating that the *Albright* court "ignored Colorado law with respect to the applicability of a charging order" where the "statute does not exempt single-member LLCs from the charging order limitation"). An adequate remedy is available without the extreme step taken by the majority in rewriting the plain and unambiguous language of a statute. This is extremely important and has far-reaching impact because the principles used to ignore the LLC statutory language under the current factual circumstances apply with equal force to multimember LLC entities and, in essence, today's decision crushes a very important element for all LLCs in Florida. If the remedies available under the LLC Act do not apply here because the phrase "exclusive remedy" is not present, the same theories apply to multimember LLCs and render the assets of all LLCs vulnerable.

***8** I would answer the certified question in the negative based on the plain language of the statute and an *in pari materia* reading of chapter 608 in its entirety. At the outset, the majority signals its departure from the LLC Act as it rephrases the certified question to frame the result. The question certified by the Eleventh Circuit requested this Court to address whether, *pursuant to section 608.433 (4),* a court may order a judgment debtor to surrender all "right, title, and interest" in the debtor's single-member limited liability company to satisfy an outstanding judgment. The majority modifies the certified question and fails to directly address the critical issue of whether the charging order provision applies uniformly to all limited liability companies regardless of membership composition. In addition, the majority advances a position with regard to chapter 56 of the Florida Statutes that was neither asserted by the parties nor discussed in the opinion of the federal court.

Despite the majority's claim that it is not creating an exception to the charging order provision of the statute for single-member LLCs, its analysis necessarily does so in contravention of the plain statutory language and general principles of Florida law. The LLC Act inherently displaces the availability of the execution provisions in chapter 56 of the Florida Statutes by providing a remedy that is intended to prevent judgment creditors from seizing ownership of the membership interests in an LLC and from liquidating the separate assets of the LLC. In doing so, the LLC Act applies uniformly to single-and multimember limited liability companies, and does *not* provide either an implicit or express exception that permits the *involuntary* transfer of all right, title, and interest in a single-member LLC to a judgment creditor. The statute also does not permit a judgment creditor to liquidate the assets of a non-debtor LLC in the manner allowed by the majority today. Therefore, under the current statutory scheme, a judgment creditor seeking satisfaction must follow the statutory remedies specifically afforded under chapter 608, which include but are not limited to a charging order, regardless of the membership composition of the LLC.

Although this plain reading may require additional steps for judgment creditors to satisfy, an LLC is a purely statutory entity that is created, authorized, and operated under the terms required by the Legislature. This Court does *not* possess the authority to judicially rewrite those operative statutes through a speculative inference not reflected in the legislation. The Legislature has the authority to amend chapter 608 to provide any additional remedies or exceptions for judgment creditors, such as an exception to the application of the charging order provision to single-member LLCs, if that is the desired result. However, by basing its premise on principles of law with regard to *voluntary* transfers, the majority suggests a result that can only be achieved by rewriting the clear statutory provisions. In effect, the majority accomplishes its result by judicially legislating section 608.433(4) out of Florida law.

***9** For instance, the majority disregards the principle that in general, an LLC exists separate from its owners, who are defined as members under the LLC Act. *See* §§ 608.402(21) (defining "member"), 608.404, Fla. Stat. (2008) ("[E]ach limited liability company organized and existing under this chapter shall have the same powers as an individual to do all things necessary to carry out its business and affairs...."). In other words, an LLC is a distinct entity that operates independently from its individual members. This characteristic directly distinguishes it from partnerships. Specifically, an LLC is not immediately responsible for the personal liabilities of its members. *See Litchfield Asset Mgmt. Corp. v. Howell,* 70 Conn.App. 133, 799 A.2d 298, 312 (Conn.App.Ct.2002),

overruled on other grounds by Robinson v. Coughlin, 266 Conn. 1, 830 A.2d 1114 (Conn.2003). The majority obliterates the clearly defined lines between the LLC as an entity and the owners as members.

Further, when the Legislature amended the LLC requirements for formation to allow single-member LLCs, it did *not* enact other changes to the provisions in the LLC Act relating to an involuntary assignment or transfer of a membership interest to a judgment creditor of a member or to the remedies afforded to a judgment creditor. Moreover, no other amendments were made to the statute to demonstrate any different application of the provisions of the LLC Act to single-member and multimember LLCs. For example, the LLC Act generally does not refer to the number of members in an LLC within the separate statutory provisions. The Legislature is presumed to have known of the charging order statute and other remedies when it introduced the single-member LLC statute. Accordingly, by choosing not to make any further changes to the statute in response to this addition, the Legislature indicated its intent for the charging order provision and other statutory remedies to apply uniformly to all LLCs. This Court should not disregard the clear and plain language of the statute.

In addition, the majority fails to correctly set forth the status of a member in an LLC and the associated rights and interests that such membership entails. An owner of a Florida LLC is classified as a "member," which is defined as

> any person who has been *admitted to a limited liability company as a member* in accordance with this chapter *and* has an *economic interest* in a limited liability company which may, but need not, be represented by a capital account.

§ 608.402(21), Fla. Stat. (2008) ("Definitions") (emphasis supplied). Therefore, to be a member of a Florida LLC it is now necessary to be admitted as such under chapter 608 *and* to also maintain an economic interest in the LLC. Moreover, a member of an LLC holds and carries a "membership interest" that encompasses both governance and economic rights:

> "Membership interest," "member's interest," or "interest" means a member's *share of the profits and the losses* of the limited liability company, the *right to receive distributions* of the limited liability company's assets, *voting rights, management rights,* or *any other rights* under this chapter or the articles of organization or operating agreement.

***10** § 608.402(23), Fla. Stat. (2008) (emphasis supplied). This provision was adopted during the 1999 amendments, which was after the modification to allow single-member LLCs. *See* ch. 99-315, § 1, at 4, Laws of Fla. In stripping the statutory protections designed to protect an LLC as an entity distinct from its owners, the majority obliterates the distinction between economic and governance rights by allowing a judgment creditor to seize both from the member and to liquidate the separate assets of the entity.

Consideration of an involuntary lien against a membership interest must address what interests of the member may be involuntarily transferred. Contrary to the view expressed by the majority, a member of an LLC is restricted from freely transferring interests in the entity. For instance, because an LLC is a legal entity that is separate and distinct from its members, the specific LLC property is not transferable by an individual member. In other words, possession of an economic and governance interest does not also create an interest in specific LLC property or the right or ability to transfer that LLC property. *See* § 608.425, Fla. Stat. (2008) (stating that all property originally contributed to the LLC or subsequently acquired is LLC property); *see also* Bishop, *supra,* 54 S.D. L.Rev. at 226 (discussing in context of federal tax liens the fact that "[t]ypically, a member is not a co-owner and has no transferable interest in limited liability company property") (citing Unif. Ltd. Liab. Co. Act § 501 (1996), 6A U.L.A. 604 (2003)). The specific property of an LLC is not subject to attachment or execution except on an express claim against the LLC itself. *See* Bishop & Kleinberger, *supra,* ¶ 1.04 [3][d].

The interpretation of the statute advanced by the majority simply ignores the separation between the particular separate assets of an LLC and a member's specific membership interest in the LLC. The

ability of a member to *voluntarily* assign his, her, or its interest does not subject the property of an LLC to execution on the judgment. Under the factual circumstances of the present case, the trial court forced the judgment debtors to *involuntarily* surrender their membership interests in the LLCs and then authorized a receiver to liquidate the specific LLC assets to satisfy the judgment. In doing so, the trial court ignored the clearly recognized legal separation between the specific assets of an LLC and a member's interest in profits or distributions from those assets. *See* F.T.C. v. Peoples Credit First, LLC, No. 8:03-CV-2353-T-TBM, 2006 WL 1169677, *2 (M.D.Fla. May 3, 2006) (ordering the appellants to "endorse and surrender to the Receiver, all of their right, title and interest in their ownership/equity unit certificates" of the LLCs for the receiver to liquidate the assets of these companies). The majority approves of this disregard by improperly applying principles of voluntary transfers to allow creditors of an LLC member to attack and liquidate the separate LLC assets.

***11** Additionally, the transfer of a membership interest is restricted by law and by the internal operating documents of the LLC. Although a member may freely transfer an economic interest, a member may not voluntarily transfer a management interest without the consent of the other LLC members. *See* § 608.432(1), Fla. Stat. (2008). Contrary to the view of the majority, in the context of a single-member LLC, the restraint on transferability expressly provided for in the statute does not disappear. Unless admitted as a member to the LLC, the transferee of the economic interest *only* receives the LLC's financial distributions that the transferring member would have received absent the transfer. *See* § 608.432(2), Fla. Stat. (2008); *see also* Bishop & Kleinberger, *supra,* ¶ 1.01[3][c]. Consequently, a member may cease to be a member upon the assignment of the *entire* membership interest (i.e., transferring all of the following: (1) share of the profits and losses of the LLC, (2) right to receive distributions of LLC assets; (3) voting rights, (4) management rights, and (5) any other rights). *See* §§ 08.402(23), 608.432(2)(c), Fla. Stat. (2008). Furthermore, a transferring member no longer qualifies under the statutory definition of "member" upon a transfer of the *entire* economic interest. *See* § 608.402(21), Fla. Stat. (2008) (defining "member" as a person who has an *economic* interest in an LLC). However, unless otherwise provided in the governing documents of the entity (i.e., the articles of incorporation and the operating agreement), the pledge or granting of "a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member *shall not cause the member to cease to be a member* or to have the power to exercise any rights or powers of a member." § 608.432(2)(c), Fla. Stat. (2008) (emphasis supplied). Accordingly, a judgment or a charging order does *not* divest the member of a membership interest in the LLC as the member retains governance rights. It only provides the judgment creditor the economic interest until the judgment is satisfied.

Whether the LLC Act allows a judgment creditor of an individual member to obtain this entire membership interest to exert full control over the assets of the LLC is the heart of the underlying dispute. Neither the Uniform Limited Liability Company Act nor the Florida LLC Act contemplates the present situation in providing for single-member LLCs but restricting the transferability of interests. This problematic issue is not one solely limited to our state, though our decision must be based solely on the language and purpose of the Florida LLC Act. Thus, in my view, this Court must apply the plain meaning of the statute unless doing so would render an absurd result. In contrast, the majority simply rewrites the statute by ignoring those inconvenient provisions that preclude its result.

Legislative Intent With Regard to the Rights of a Judgment Creditor of a Member

***12** I understand the policy concerns of the FTC and the majority with the inherent problems in the transferability of both governance and economic interests under the LLC Act because the plain language does not contemplate the impact of a judgment creditor seeking to obtain the entire membership interest of a single-member LLC and to obtain the ability to liquidate the assets of the LLC. The Florida statute simply does not create a different mechanism for obtaining the assets of a single-member LLC as opposed to a multimember LLC and, therefore, there is no room in the statutory language for different rules.

However, I decline to join in rewriting the statute with inferences and implications, which is the approach adopted by the majority. This Court generally avoids "judicial invention," as accomplished by the majority, when the statute may be construed under the plain language of the relevant legislative act. *See* Bishop & Kleinberger, *supra,* ¶ 1.04[3][d]. In construing a statute, we strive to effectuate the Legislature's intent by considering first the statute's plain language. *See* Kasischke v.

State, 991 So.2d 803, 807 (Fla.2008) (citing Borden v. East-European Ins. Co., 921 So.2d 587, 595 (Fla.2006)). When, as it is here, the statute is clear and unambiguous, we do *not* "look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." Daniels v. Fla. Dep't of Health, 898 So.2d 61, 64 (Fla.2005). This is especially applicable in the instance of a business entity created solely by state statute.

If the statute had been written as the majority suggests here, I would agree with the result requested by the FTC. However, the underlying conclusion lacks statutory support. By reading only self-selected provisions of the statute to support this result, the majority disregards the remainder of the LLC Act, which destroys the isolated premise that the charging order provision only applies to multimember LLCs and that other statutory restrictions do not exist.

Additionally, exceptions not found within the statute cannot simply be read into the statute, as the majority does by holding that single-member LLCs are an *implicit* exception to the charging order provision. The remedy provided to the FTC by the federal district court and approved by the majority in this instance-that a judgment creditor of a single-member LLC is entitled to receive a surrender and transfer of the full right, title, and interest of the judgment debtor and to liquidate the LLC assets-is *not* provided for under the plain language of the LLC Act without judicially writing an exception into the statute.

Judgment Creditor Can Charge the Debtor Member's Interest in the LLC With Payment of the Unsatisfied Judgment

As a construct of statutory creation, an LLC is an entity separate and distinct from its members, and thus the liability of the LLC is not directly imputed to its members. In a similar manner, the liability of individual members is not directly imposed separately upon the LLC.

***13** Although a member's interest in an LLC is considered to be personal property, *see* § 608.431, Fla. Stat. (2008), and personal property is generally an asset that may be levied upon by a judgment creditor under Florida law, *see* § 56.061, Fla. Stat. (2008), there are statutory restrictions in the LLC context. Any rights that a judgment creditor has to the personal property of a judgment debtor are limited to those provided by the applicable creating statute.

The appellants contend that if a judgment creditor may seek satisfaction of a member's personal debt from a non-party LLC, the plain language of the LLC Act limits the judgment creditor to a charging order. *See* § 608.433(4), Fla. Stat. (2008). A charging order is a statutory procedure whereby a creditor of an individual member can satisfy its claim from the member's interest in the limited liability company. *See Black's Law Dictionary* 266 (9th ed.2009) (defining term in the context of partnership law). It is understandable that the FTC challenges the charging order concept being deemed a remedy for a judgment creditor because, from the creditor's perspective, a charging order may not be as attractive as just seizing the LLC assets. For example, a creditor may not receive *any* satisfaction of the judgment if there are no actual distributions from the LLC to the judgment creditor through the debtor-member's economic interest. *See* Elizabeth M. Schurig & Amy P. Jetel, *A Shocking Revelation! Fact or Fiction? A Charging Order is the Exclusive Remedy Against a Partnership Interest,* Probate & Property, Nov.-Dec.2003, at 57, 58. The preferred creditor's remedy would be a transfer and surrender of the membership interest that is subject to the charging order, which is a more permanent remedy and may increase the creditor's chances of having the debt satisfied. *See id.*

The application of the charging order provision, including its consequences and implications, has been hotly debated in the context of both partnership and LLC law because of the similarities of these entities. The language of the charging order provision in the Revised Uniform Limited Partnership Act (1976), as amended in 1985, is virtually identical to that used in the Uniform Limited Liability Company Act, as well as in the Florida LLC Act. *See* §§ 608.433(4), 620.153, Fla. Stat. (2008). The Uniform Limited Partnership Act of 2001 significantly changed this provision by explicitly allowing execution upon a judgment debtor's partnership interest. *See Schurig & Jetel, supra,* at 58. However, the Florida Partnership Act provides that a charging order is the exclusive remedy for judgment creditors. *See* § 620.8504(5), Fla. Stat. (2008) (stating the charging order provision provides the "exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership"). In the context of

partnership interests, Florida courts have also determined that a charging order is the *exclusive* remedy for judgment creditors based on the straightforward language of the statute. *See* Givens v. Nat'l Loan Investors L.P., 724 So.2d 610, 612 (Fla. 5th DCA 1998) (holding that charging order is the exclusive remedy for a judgment creditor of a partner); Myrick v. Second Nat'l Bank of Clearwater, 335 So.2d 343, 345 (Fla. 2d DCA 1976) (substantially similar). The Florida LLC Act has neither adopted an explicit surrender-and-transfer remedy nor does it include a provision explicitly stating that the charging order is the exclusive remedy of the judgment creditor. The plain language of the charging order provision only provides one remedy that a judgment creditor may choose to request from a court and that the court may, in its discretion, choose to impose. *See* § 608.433(4), Fla. Stat. (2008).

***14** To support its conclusion that charging orders are inapplicable to single-member LLCs, the majority compares the provision in the partnership statute that mandates a charging order as an exclusive remedy to the non-exclusive provision in the LLC Act. The exclusivity of the remedy is irrelevant to this analysis. By relying on an inapplicable statute, the majority ignores the plain language of the LLC Act and the other restrictions of the statute, which universally apply the use of a charging order to judgment creditors of all LLCs, regardless of the composition of the membership. The majority opinion now eliminates the charging order remedy for multimember LLCs under its theory of "nonexclusivity" which is a disaster for those entities.

Plain Meaning of the Statute's Actual Language

The charging order provision does not act as a reverse-asset shield against the creditors of a member. Instead, the LLC Act implements statutory restrictions on the transfer and assignment of membership interests in an LLC. These restrictions limit the mechanisms available to a judgment creditor of a member of any type of LLC to obtain satisfaction of a judgment against the membership interest. Specifically, section 608.433(4) grants a court of competent jurisdiction the discretion to enter a charging order against a member's interest in the LLC in favor of the judgment creditor:

> 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) On application to a court of competent jurisdiction by any judgment creditor of a member, the court *may charge the limited liability company membership interest of the member with payment of the unsatisfied amount of the judgment with interest.* To the extent so charged, *the judgment creditor has only the rights of an assignee of such interest.* This chapter does not deprive any member of the benefit of any exemption....

***15** § 608.433, Fla. Stat. (2008) (emphasis supplied).

The majority asserts that the placement of the charging order provision within the section titled "Right of assignee to become member" mandates that the provision only applies to circumstances where the interest of the member is subject to the rights of other LLC members. There is absolutely nothing to support the notion that the Legislature's placement of the charging order provision as a

subsection of section 608.433, instead of as a separately titled section elsewhere in the statute, was intended to unilaterally link its application only to the multimember context. For instance, the Revised Uniform Limited Liability Company Act, unlike the Florida statute, places the charging order provision as a separately titled section within the article that discusses transferable interests and rights of transferees *and* creditors. *See* Unif. Ltd. Liab. Co. Act § 503 (revised 2006), 6B U.L.A. 498 (2008). Other states have also adopted a statutory scheme that places the charging order remedy within a separate provision specifically dealing with the rights of a judgment creditor. *See* Conn. Gen.Stat. § 34-171 (2007). Thus, the majority's interpretation would again fail by a mere movement of the charging order provision to a separately titled section within the Act.

In contrast to the majority, my review of this provision begins with the actual language of the statute. In construing a statute, it is our purpose to effectuate legislative intent because "legislative intent is the polestar that guides a court's statutory construction analysis." *See Polite v. State,* 973 So.2d 1107, 1111 (Fla.2007) (citing *Bautista v. State,* 863 So.2d 1180, 1185 (Fla.2003)) (quoting *State v. J.M.,* 824 So.2d 105, 109 (Fla.2002)). A statute's plain and ordinary meaning must be given effect unless doing so would lead to an unreasonable or absurd result. *See City of Miami Beach v. Galbut,* 626 So.2d 192, 193 (Fla.1993). Here, the plain language establishes a charging order remedy for a judgment creditor that the court *may* impose. This section provides the only mechanism in the *entire* statute specifically allocating a remedy for a judgment creditor to attach the membership interest of a judgment debtor. In the multimember context, the uncontested, general rule is that a charging order is the appropriate remedy, even if the language indicates that such a decision is within the court's discretion. *See Myrick,* 335 So.2d at 344. As the Second District explained:

> Rather, the charging order is the essential first step, and all further proceedings must occur under the supervision of the court, which may take all appropriate actions, including the appointment of a receiver if necessary, to protect the interests of the various parties.

Id. at 345. Without express language to the contrary, the discretionary nature of this remedy applies with equal force to single-and multimember LLCs, which the majority erases from the statute.

***16** Nevertheless, the certified question before us is not the discretionary nature of this remedy but whether a court should even apply the charging order remedy to single-member LLCs. The majority rephrases the question certified to this Court as not considering whether an exception to the charging order provision should be implied for single-member LLCs. In doing so, the majority unjustifiably alters and recasts the question posited by the federal appellate court to fit the majority's result. The convoluted alternative presented by the majority is premised on a limited application of a charging order without express language in the statutory scheme to support this assertion.

Here, the plain language crafted by the Legislature does *not* limit this remedy to the multimember circumstance, as the majority holds. Further, exceptions not made in a statute generally cannot be read into the statute, unless the exception is within the reason of the law. *See Cont'l Assurance Co. v. Carroll,* 485 So.2d 406, 409 (Fla.1986) ("This Court cannot grant an exception to a statute nor can we construe an unambiguous statute different from its plain meaning."); *Dobbs v. Sea Isle Hotel,* 56 So.2d 341, 342 (Fla.1952) ("We apprehend that had the legislature intended to establish other exceptions it would have done so clearly and unequivocally.... We cannot write into the law any other exception...."). Thus, without going behind the plain language of the statute, at first blush, the statute applies equally to all LLCs, regardless of membership composition.

The distinction asserted by the FTC is clearly inconsistent with the plain language of section 608.434 with regard to the proper method for a judgment creditor to reach the interest of a member in a LLC in that a complete surrender of the membership interest and the subsequent liquidation of the LLC assets are *not* contemplated by the LLC Act. The majority's interpretation that the charging order remedy only applies to multimember LLCs can only be given effect if the plain language of this provision renders an absurd result, which it does not.

The purpose of creating the charging order provision was never limited to the protection of "innocent" members of an LLC. Moreover, when amending the LLC Act to permit single-member LLCs, the Legislature did not also amend the assignment of interest and charging order provisions to create

different procedures for single-and multimember LLCs. The appellants argue that this indicates a manifestation of legislative intent; however, it appears more likely that our Legislature, as with many other states, had not yet contemplated the situation before us. Even so, the appropriate remedy in this circumstance is not for this Court to impose its speculative interpretation, but for the Legislature to amend the statute to reflect its specific intention, if necessary. When interpreting a statute that is unambiguous and clear, this Court defers to the Legislature's authority to create a new limitation and right of action. Here, the actual language of the statute does not distinguish between the number of members in an LLC. Thus, the charging order applies with equal force to both single-member and multimember LLCs, and the assignment provision of section 608.433 does not render an absurd result.

***17** The majority purports to base its analysis on the plain language of the statute. However, the FTC and a multitude of legal theorists agree that the plain language of the statute does not support this result. *See e.g.,* Bishop & Kleinberger, *supra,* ¶ 1.04[3][d]; Bishop, *supra,* 54 S.D. L.Rev. at 202; Ribstein, *supra,* 30 Del. J. Corp. L. at 221-25; Rutledge & Geu, *supra,* Bus. Entities, Sept.-Oct.2003 at 16; Stein, *supra,* Bus. Entities, Sept.-Oct.2006 at 28. All authorities recognize that the sole way to achieve the result desired by the FTC and the majority is to ignore the plain language of the statute. No external support exists for the majority's bare assertions.

Rights of an Assignee

The plain language of section 608.433(4) applies the charging provision to the judgment creditor of both a single-member and multimember LLC. The next analytical step is to determine what rights that charging order provision grants the judgment creditor. To the extent that a membership interest is charged with a judgment, the plain text of the statute specifically provides that the judgment creditor only possesses the rights of an assignee of such interest. *See* § 608.433(4), Fla. Stat. (2008) ("To the extent so charged, the judgment creditor has only the rights of an assignee of such interest.").

To determine the rights of an assignee of such an interest, we look to section 608.432, which defines these rights. To divine the intent of the Legislature, we construe related statutory provisions together, or *in pari materia,* to achieve a consistent whole that gives full, harmonious effect to all related statutory provisions. *See Heart of Adoptions, Inc. v. J.A.,* 963 So.2d 189, 199 (Fla.2007) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.,* 604 So.2d 452, 455 (Fla.1992)). The FTC asserts that the rights delineated in this section render an absurd result when applied to single-member LLCs; however, the FTC ignores that the same rule applies even if only a *part* of a member's interest is needed to satisfy a debt amount. Further, an assignee is entitled solely to an economic interest and is not entitled to governance rights without the unanimous approval of the other members or as otherwise provided in the articles of incorporation or the operating agreement.

The plain reading of this provision does not establish the judgment creditor as an assignee of such interest, only that to the extent of the judgment amount charged to the economic interest, the judgment creditor has the same rights as an assignee. Though section 608.433(4) directs that the judgment creditor has only the rights of an assignee of such interest, as provided in section 608.432, it is important to clarify that the judgment creditor does not become an assignee; the language merely indicates that the judgment creditor's rights do not *exceed* those of an assignee.

This clear distinction can be seen when considering the voluntary and involuntary nature of these different interests-an assignment is generally a voluntary action made by an assignor, whereas a charging order is clearly an involuntary assignment by a judgment debtor. For that reason, the majority formulates a false conclusion that section 404.433(1) provides a foundation for the bare assertion that a charging order is inapplicable in the context of a single-member LLC. Exploiting this false foundation, the majority asserts a result that is unsupportable when considered *in pari materia* with the entirety of the statutory scheme.

***18** The question before this Court requires articulation of a general principle of law that applies to all types of judgments, whether less than, equal to, or greater than the value of a membership interest, and to all types of LLCs. Reading section 608.433(4) and 608.432 together, a judgment creditor may be assigned a portion of the economic interest, depending on the amount of the

judgment. This provision contemplates that a charging order may not encompass a member's entire membership interest if the judgment is for less than the available economic distributions of an LLC. For instance, if the LLC membership interest here were worth more than the $10 million judgment, it would be unnecessary under this provision to transfer the full economic interest in the LLC to satisfy the judgment. Further, a member does not lose the economic interest *and* membership status unless *all* of the economic interest is charged to the judgment creditor. *See* § 608.432(2)(c), Fla. Stat. (2008). Thus, if the judgment were for less than the value of either the membership interest or the assets in the LLC, the members could transfer a *portion* of their economic interest and still retain their membership interest, in that they would still hold an economic and governance interest in the LLC. The FTC would then only have the right to receive distributions or allocations of income in an amount corresponding to satisfaction of a partial economic interest. Regardless of the amount of the interest assigned, the judgment creditor does not immediately receive a governance interest. *See* § 608.432(1), (2), Fla. Stat. (2008).

In such a circumstance, the result contemplated by the FTC does not come to pass-the single member maintains his, her, or its membership rights because a member only ceases to be a member and to have the power to exercise any governance rights upon assignment of *all* of the economic interest of such member. *See id.* The majority disregards this factual possibility and considers only the application of the statutory scheme in the context of a judgment that is equal to or greater than the value of the membership interest. Under the majority's interpretation of the statute, a judgment creditor could force a single-member LLC to surrender all of its interest and liquidate the assets specifically owned by the LLC, even if the judgment were for less than the assets' worth.

Alternative Remedies

Currently, the plain language of the statute provides additional remedies to the charging order provision for judgment creditors seeking satisfaction on a judgment that is equal to or greater than the economic distributions available under a charging order-(1) dissolution of the LLC, (2) an order of insolvency against the judgment debtor, or (3) an order conflating the LLC and the member to allow a court to reach the property assets of the LLC. First, upon the issuance of a charging order that exceeds a member's economic interest in an LLC for satisfaction of the judgment, dissolution may be achieved because the remaining member ceases to possess an economic interest and governance rights in the LLC following the assignment of *all* of its membership interest. *See* § 608.432(2)(c), Fla. Stat. (2008) ("Assignment of member's interest"). The statutory provision with regard to the assignment of a member's interest provides, in relevant part:

> ***19** (2) Unless otherwise provided in the articles of organization or operating agreement:
>
> ....
>
> (c) A *member ceases to be a member* and *to have the power to exercise any rights or powers of a member upon assignment* of *all* of the membership interest of such member. Unless otherwise provided in the articles of organization or operating agreement, the pledge of, or *granting of* a security interest, lien, or *other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member* or to have the power to exercise any rights or powers of a member.

Id. (emphasis supplied). This demonstrates a clear and unambiguous distinction between a voluntary assignment of *all* the interest and the granting of an encumbrance against *any or all* of the membership interest. Because a "member" is defined as an actual or legal person admitted as such under chapter 608, who also has an *economic interest* in the LLC, it is the assignment of *all* of that economic interest that divests the member of his, her, or its status and power. Thus, if the charging order is only for a part of the economic interest held by the judgment debtor, the statute does not require that the member cease to be a member. *See* §§ 608.402(21), 608.432(2)(c), Fla. Stat. (2008). If, on the other hand, the charging order is to the extent that it requires a surrender of *all* of the member's economic interest, in that circumstance, the member ceases to be a member under section 608.432(2)(c). In the case of a *member*-managed LLC, this would leave the LLC without anyone to govern its affairs. However, within the *manager*-managed LLC context, the manager would remain in a position to direct the LLC and distribute any profits according to any governing

documents.

This provision need not be limited to single-member LLCs. For example, if the appellants had entered into a multimember LLC, that entity would be subject to the same statutory construction issues as a single-member LLC. Once the FTC obtained a judgment against a member of the multimember LLC, a charging order would be lodged against that member's interest. In that circumstance, though there may be charging orders against separate membership interests, in essence the same divestiture of the membership interest would occur if the judgment was for *all* of each member's economic interest.

It is important to note, however, if an LLC becomes a shell or legal fiction with no actual governing members, the LLC shall be dissolved under section 608.441. The dissolution statute provides:

> (1) A limited liability company organized under this chapter shall be dissolved, and the limited liability company's affairs shall be concluded, upon the first to occur of any of the following events:
>
> ....
>
> (d) *At any time there are no members;* however, unless otherwise provided in the articles of organization or operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within 90 days, or such other period as provided in the articles of organization or operating agreement, after the occurrence of the event that terminated the continued membership of the last remaining member, the personal or other legal representative of the last remaining member agrees in writing to continue the limited liability company and agrees to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or
>
> ***20** ....
>
> (4) Following the occurrence of any of the events specified in this section which cause the dissolution of the limited liability company, the limited liability company shall deliver articles of dissolution to the Department of State for filing.

§ 608.441(1)(d), (4), Fla. Stat. (2008) (emphasis supplied). A dissolved LLC continues its existence but does not carry on any business except that which is appropriate to wind up and liquidate its business and affairs under section 608.4431. Once dissolved, the liquidated assets may then be distributed to a judgment creditor holding a charging order. *See* § 608.444(1), Fla. Stat. (2008).

The judgment creditor may also seek an order of insolvency against the individual member, in which instance that member ceases to be a member of the single-member LLC, and the member's interest becomes part of the bankruptcy estate. In Florida, the commencement of a bankruptcy proceeding also terminates membership within an LLC. *See* §§ 608.402(4), 608.4237, Fla. Stat (2008). The decisions advanced by the FTC involved bankruptcies of the judgment debtor, and the rights of a judgment creditor in a bankruptcy are substantially different than the rights of a judgment creditor generally. *See In re Modanlo,* 412 B.R. 715 (Bankr.D.Md.2006), *aff'd,* No. 06-2213 (4th Cir.2008); *In re Albright,* 291 B.R. 538, 539 (Bankr.D.Colo.2003). Upon commencement of a bankruptcy proceeding, a bankruptcy estate includes all legal or equitable property interests of the debtor. An LLC membership interest is the personal property of the member. Therefore, when a judgment debtor files for bankruptcy, or is subject to an order of insolvency, the judgment debtor effectively transfers any membership interest in an LLC to the bankruptcy estate. In this context, it is reasonable for the bankruptcy courts to construe the LLC Act to no longer require a charging order because the judgment debtor has passed the entire membership interest to the bankruptcy estate, and the trustee stands in the shoes of the judgment debtor, who is now seeking reorganization of its assets. *See, e.g., In re Albright,* 291 B.R. at 541. The majority refuses to even acknowledge any of these approaches.

This bankruptcy context is distinguishable from the general case of a judgment creditor seeking to

execute upon the assets of an LLC because the judgment may not meet or exceed the economic interest remaining in the LLC. Thus, the *Albright* bankruptcy situation should not alter our determination that the plain language of the statute applies the charging order provision to both single-and multimember LLCs. This may be a more complicated procedure than to allow a court to simply "shortcut" and rewrite the law and enter a surrender-and-transfer order of a member's entire right, title, and interest in an LLC as the majority accomplishes today. However, it is the *method prescribed by the statute.* Although the procedures created by the statute may involve multiple steps and legal proceedings, they are not absurd or irreconcilable with chapter 608 as a whole.

A Charging Order, in and of Itself, Does Not Entitle a Judgment Creditor to Seize and Dissolve a Florida LLC

***21** Based on the plain language of the statute and the construction of chapter 608 *in pari materia,* I would answer the certified question in the negative: A court may *not* order a judgment debtor to surrender and transfer outright all "right, title, and interest" in the debtor's single-member LLC to satisfy an outstanding judgment. If a judgment creditor wishes to proceed against a single-member LLC, it may first request a court of competent jurisdiction to impose a charging order on the member's interest. If the judgment creditor is concerned that the member is constraining distribution of assets and incomes, the creditor may seek judicial remedies to enforce proper distribution. In addition, if the economic interest so charged is insufficient to satisfy the judgment, the judgment creditor may move through additional proceedings: (1) seek to dissolve the LLC and to have its assets liquidated and subsequently distributed to the judgment creditor; (2) seek an order of insolvency against the judgment debtor, in which case the trustee of the bankruptcy estate will control the assets of the LLC, or (3) request a court to pierce the liability shield to make available the personal assets of the company to satisfy the personal debts of its member. This plain reading of chapter 608 may create additional steps for judgment creditors and judgment debtors to satisfy, as characterized by the federal district court in this case. However, only the Legislature, as the architects of this statutorily created entity, has the authority to provide a more streamlined surrender of these rights, not the judicial branch through selective reading and rewriting of the statute. As enacted, the plain meaning of the statute is unambiguous and does not require "judicial invention" of exceptions that are clearly not provided in the LLC Act. If the Legislature wishes to make either an exception to the charging order provision for single-member LLCs or to provide additional remedies to judgment creditors, it may do so through an amendment of chapter 608.

Accordingly, I would answer the certified question in the negative. Under Florida law, a court does not have the authority to order an LLC member to surrender and transfer all right, title, and interest in an LLC and have LLC assets liquidated without first going through the statutory requirements created by the Legislature.

POLSTON, J., concurs.

Fla.,2010.
Olmstead v. F.T.C.
--- So.3d ----, 2010 WL 2518106 (Fla.), 2010-1 Trade Cases P 77,079, 35 Fla. L. Weekly S357