

REI Wealth MAG

Issue 54

COVID-19
Special Issue!

Prepare for
the Coming
Greed Pandemic

How These Co-Investors
Continue Delivering High Returns
Through Yet Another Recession

FLIP and DANI ROBISON

**Dynamic Duo Share The Route To Financial
Freedom & Empower Others to Their Best Life**

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MULTIFAMILY INVESTING

Virtual Series

Tamiel Kenney

Mark Kenney

10 WEBINARS | 3 BONUS SESSIONS

SESSIONS

Coronavirus Impact on Traditional Investing & How to Mitigate Your Risk Through Multifamily

Understand Syndication Roles & ROI as a General Partner + Multifamily Financing

Tax & Asset Protection

What to Know Before Investing in a Multifamily Syndication, Critical Questions to Ask

A Roundtable Discussion: Preparing for the Health, Economic and Government Effects on Apartment Investors

Real Estate Investors: Lower Your Income Tax with Cost Segregation

Strategies & Structures to Raise Capital from Ultra-Wealthy Investors & Offices

How the Wealthiest Families Have Stored & Passed on their Wealth Over Generations

Coronavirus Tax Relief

How to Syndicate Apartment Buildings Now

PLUS 3 BONUS SESSIONS!

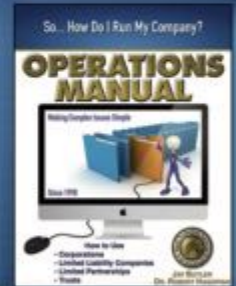
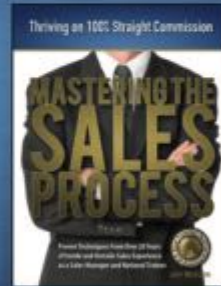
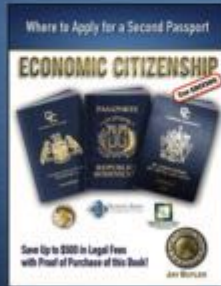
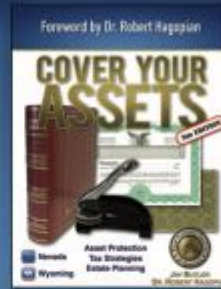
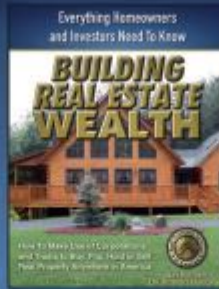
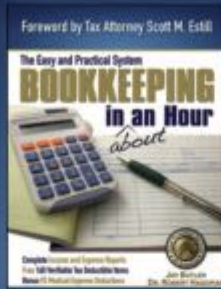
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What is “Charging Order Protection?”

By Jay Butler

The charging order is a remedy (or solution) that a creditor uses to place a judgment against an entity (ie. Corporation, Limited Liability Company or Limited Partnership) which, in doing so, becomes the primary defense for the debtor.

Originally the ‘Charging Order’ came into existence under the 1914 passage of the Uniform Partnership Act (UPA), but it had unintended consequences for other partners in that a judgment creditor could force the seizure of partnership assets and sell the debtor-partner’s interests, often causing a compulsory dissolution.

Meaning, if you and I had a successful business together and I were sued in my individual capacity (outside of our business) and lost, a judgment creditor

was permitted to come into our Limited Partnership and seize assets, potentially dissolving our business! How would that be fair to you, when you did nothing wrong but must now suffer the consequences?

This type of ‘forced partnership’ with the third-party judgement creditor was found by the Courts to be at odds with the principle of Delectus Personae:

“At their core... (partnerships) are relations of trust between partners... and when relationships are important, a person cannot be compelled to associate with another person.” Thus the **other** partners in the Limited Partnership should not be forced into a relationship with someone outside the Partnership.

The Uniform Limited Partnership Act (ULPA) and later the Uniform Limited Liability Company Act (ULLCA)

prevented creditors from compelling such forced associations and dissolutions on partnerships and companies by stating, *“Partnership property is not subject to attachment or execution”*.

Judges may award creditors the **rights** of an assignee (distribution of profits) but not the **interests** of an assignee (ownership). These “transferee rights” do not grant creditors any control or ability to participate in the management of the company. As such, creditors have no say as to when, or in what amount, distributions can be made. The judgement creditor may not force distributions, nor maintain managerial rights, nor exercise any measure of control over the entity.

In short, the charging order protects the other members from the judgment creditors of a debtor owner as this image demonstrates:



If Santa Claus were sued in his individual capacity and a greedy creditor, in an attempt to collect more money, obtained a judgement against his LLC business, his fellow reindeer business partners would be protected from this leech which waited outside to abscond with the profits of their company.

But with the advent of the 'single-member' LLC, the question quickly arose, "What happens when there are no other member interests to protect?"

Ashley Albright Case

"A charging order protects the autonomy of the original members and their ability to manage their own enterprise. In a single-member entity, there are no non-debtor members to protect. The charging order limitation serves no purpose in a single-member limited liability company, because there are no other parties' interests affected."

– Case No. 01-11367, 291 B.R. 538 (Bankr. D Colo. 2003)

The only three States affording charging order protection as the "exclusive remedy" to a single-member Limited Liability Company are Nevada, Wyoming and Delaware.

So what happens if a person gets a "charging order" against your company in one of these favorable jurisdictions?

The only three States affording charging order protection as the "exclusive remedy" to a single-member Limited Liability Company are Nevada, Wyoming and Delaware.



The Judgment Creditor has:

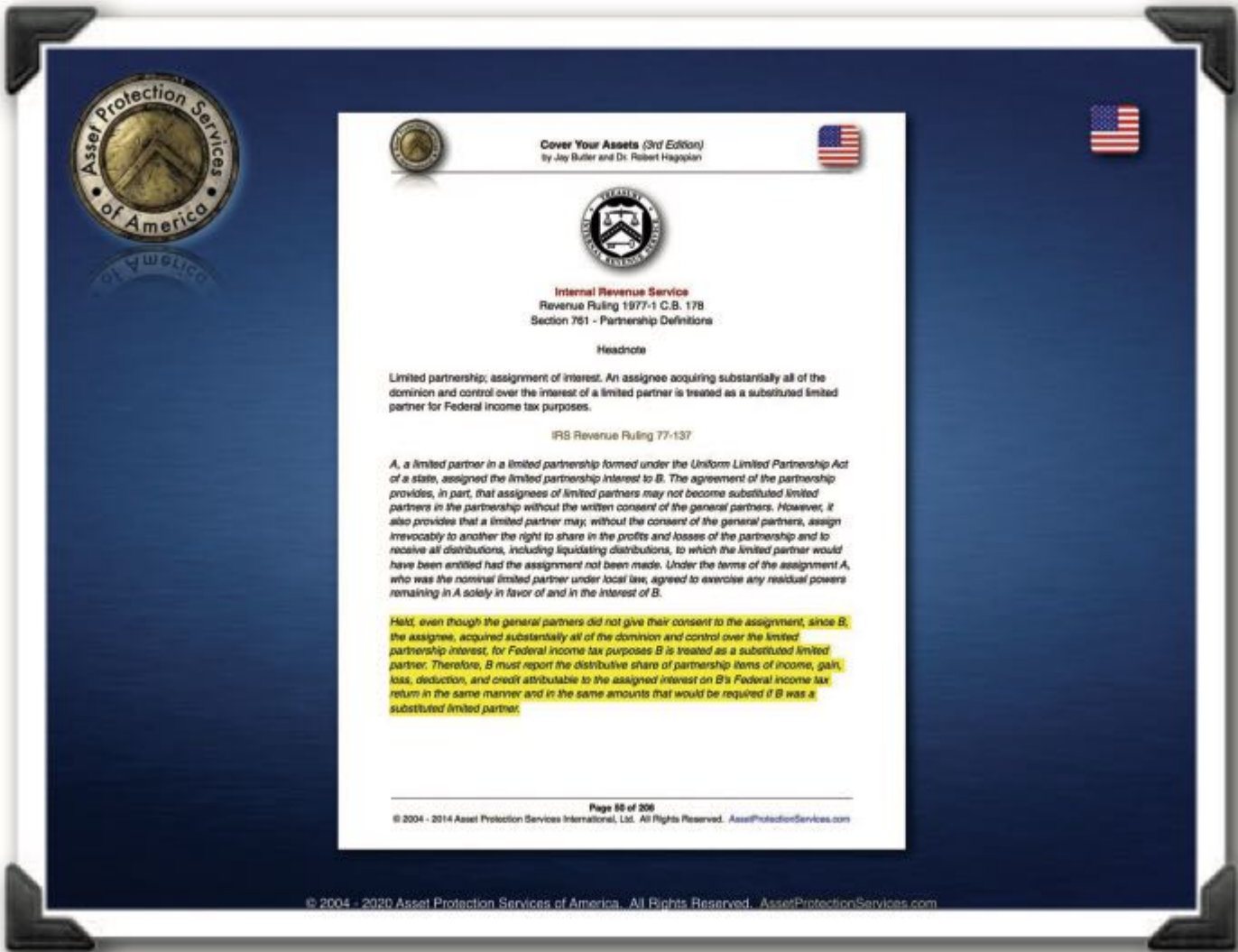
- NO control or ability to participate in the management of the entity;
- NO say as to when, or in what amount, distributions can be made;
- NO authority to force distributions;
- NO managerial rights;
- NO ability to exercise any measure of control over the entity; and

**THE CREDITOR MUST
PAY TAXES ON MONEY
THEY CANNOT
COLLECT!**

Under the Internal Revenue Service Ruling 77-137, it states:

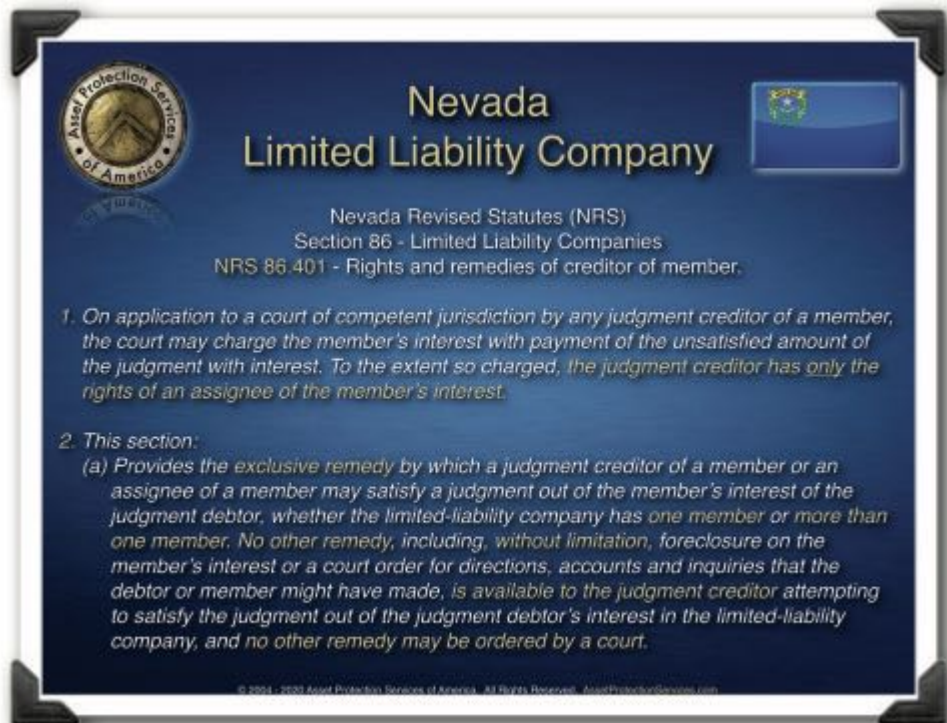
"Held, even though the general partners did not give their consent to the assignment, since B (the assignee) acquired substantially all of the dominion and control over the limited partnership interest, for Federal income tax purposes B is treated as a substituted limited partner. Therefore, B, must report the distributive share of partnership items of income, gain, loss, deduction, and credit attributable to the assigned interest on B's Federal income tax return in the same manner and in the same amounts that would be required if B was a substituted limited partner."

The charging order limitation serves no purpose in a single-member limited liability company, because there are no other parties' interests affected."



How is that for sweet justice? A frivolous lawsuit is brought against you and, after the same people attack your LLC trying to destroy your family business, not only do they walk away with nothing, but they have to pay taxes on money they cannot collect~!

But to ensure you get the benefit of this positive IRS Revenue Ruling, you must have incorporated in a favorable jurisdiction. The “Charging Order Protection” in Nevada, Wyoming and Delaware are arguably the very best in the nation!





Nevada “For-Profit” Corporations



Nevada Revised Statute (NRS)
Section 78 - Private Corporations
NRS 78.746 - Action Against Stockholder by Judgement Creditor; Limitation
(Added to NRS by 2007, 2639; A 2009, 2829)

1. *On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the stockholder's stock 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 the stockholder's stock.*
2. *This section:*
 - (a) *Applies only to a corporation that:*
 - (1) *Has more than 1 but fewer than 100 stockholders of record at any time.*
 - (c) *Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.*

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Moreover, Nevada is currently the only State in the Union to afford “Charging Order” protection to the shareholders of a “For Profit Corporation” as shown here.

But not all charging order protection is the same; take a look at the language under the California Corporations Code (LLC) Section 17302:

- (a) ... ***The court may appoint a receiver*** of the share of the distributions due or to become due to the judgement debtor.
- (b) A charging order constitutes a lien on the judgement debtor’s assignable membership interest. ***The court may order a foreclosure*** on the membership interest subject to the charging order ***at anytime. (emphasis added)***

Be sure to choose the state in which you incorporate your “parent company” very carefully as not all state laws are the same!

For more information on how to properly “Cover Your Assets” please contact our offices today for your free asset protection consultation.

Sincerely, **Jay Butler**
Managing Director

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