

GOLDSMITH & GUYMON

A Professional Law Corporation

Dara J. Goldsmith, Esq.★
Marjorie A. Guymon, Esq.★★

Also admitted in Arizona, California & Hawaii ★
Also admitted in Utah ★★

Nevada Legislature Amends its LLC Statute to Provide Greater Asset Protection from Judgment Creditors for Single-Member LLC's

The Nevada Legislature has amended its LLC statute in response to recent case law from other states suggesting that single-member LLC's do not provide asset protection. In *Olmstead v. Federal Trade Commission*, 2010 WL 2518106 (Fla. 2010), the Supreme Court of Florida, held that a judgment debtor can be ordered to surrender all his rights and interest in the debtor's single-member LLC to satisfy an outstanding judgment. Therefore, in Florida, a single-member LLC does not provide asset protection from anyone that obtains a judgment against the owner of a single-member LLC. The holding in *Olmstead* depended on whether a charging order is the exclusive remedy against a single-member LLC.

During the 2011 legislative session, the Nevada Legislature, in response to the holding in *Olmstead*, amended its LLC statute to provide that a charging order is the exclusive remedy against a single-member LLC. The amendment is effective beginning October 1, 2011. Members of single-member LLC's will enjoy the same protection as multi-member LLC's by limiting a judgment creditor to a charging order as the exclusive remedy. Thus, the holding in *Olmstead* is inapplicable in Nevada

NRS 86.401 is amended to read as follows: [amendments are in bold and italics]

1. On application to a court of competent jurisdiction by ***any*** judgment creditor of a member, the court may charge the member's interest 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 member's interest.
2. This section:
 - (a) Provides the exclusive remedy by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the judgment debtor, ***whether the limited-liability company has one member or more than one member. No other remedy, including, without limitation, foreclosure on the member's interest or a court order for directions, accounts and inquiries that the debtor or member might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited-liability company, and no other remedy may be ordered by a court.***
 - (b) Does not deprive any member of the benefit of any exemption applicable to his or her interest.
 - (c) ***Does not supersede any written agreement between a member and a creditor if the written agreement does not conflict with the limited-liability company's articles of organization or operating agreement.***