

## FLORIDA LLC'S: LEGISLATURE FIXES ARE HERE

**BY: MARC J. SOSS, ESQ.**

The world of Florida Limited Liability Companies (“LLC”) was turned upside down on June 24, 2010, with the Florida Supreme Court’s ruling in *Olmstead v. Federal Trade Commission* (No. SC08-1009), 44 So.3d 76. The court in *Olmstead* followed the letter of the law and ruled that a creditor was not limited to a charging order as its exclusive remedy to enforce a judgment against the sole member of a Florida single-member LLC. To right the situation, Governor Scott is expected to sign into law legislation that will amend s. 608.433 of the Florida Statutes, to clarify that the ruling in *Olmstead* does not extend to a member of a Florida multi-member LLC. The legislation further establishes procedures for application of the *Olmstead* ruling to a member of a Florida single-member LLC.

The legislation retroactively amends s. 608.433 to clarify with specificity a judgment creditor options against single and multi-member Florida LLC. The Florida Supreme Court’s ruling in *Olmstead* had left many LLC creditor issues open to interpretation.

In the case of a single-member LLC, the legislation provides that a creditor will not be limited to a charging order, to enforce a judgment, as its sole and exclusive option if it can establish to the satisfaction of a court “that distributions under a charging order will not satisfy the judgment within a reasonable time.” Once the showing has been made, the court may order the sale of the debtor’s LLC membership interest through a foreclosure sale. A purchaser of the membership interest will become a member of the LLC, not just an assignee.

In the case of a multi-member LLC, the legislation provides that a “charging order” will be the sole and exclusive remedy by which a creditor may satisfy a judgment against a member or a member's assignee interest. The legislation further provides that foreclosure will not be an available creditor remedy in the case of a multi-member LLC.

The legislation fails to answer the question as to what defines a single or multi-member LLC. The law fails to define the term “multi-member LLC” other than to state that a multi-member LLC is an LLC with more than one member.

To learn more, contact me at (941) 928-0310 or [mjs@fl-estateplanning.com](mailto:mjs@fl-estateplanning.com) or by visiting my website at [www.fl-estateplanning.com](http://www.fl-estateplanning.com). I look forward to assisting you with your Florida legal matter.