

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

Ernest A. Becker, IV, INDIVIDUALLY,
ERNEST A. BECKER, IV and KATHLEEN
BECKER AS TRUSTEES OF THE ERNEST A.
BECKER IV and KATHLEEN C. BECKER
FAMILY TRUST; EB FAMILY HOLDINGS,
LLC; KIMBERLY RIGGS; SALLIE BECKER;
BRIAN BECKER; and WILLIAM A.
LEONARD, TRUSTEE,

Appellants,

vs.

ERNEST A. BECKER, V,

Respondent.

SUPREME COURT NO. 65335

Electronically Filed

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On Certification from United
States Bankruptcy Court for the
District of Nevada
Trade K. Lindeman
Clerk of Supreme Court

Case No. BK-S-13-14932-BTB

APPELLANTS' SUPPLEMENTAL ADDENDUM

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<i>LISI Asset Protection Planning Newsletter # 180</i> (June 20, 2011)	SA10 - SA15

CERTIFICATE OF SERVICE

I certify that on the _____ day of February, 2015, I served a copy of this APPELLANTS' SUPPLEMENTAL ADDENDUM by mailing it by first class mail with sufficient postage prepaid to the following address(es):

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Honorable Bruce T. Beesley
U. S. Bankruptcy Judge
300 Booth St., 5th Floor
Reno, NV 89509

Lenard Schwartzer, Trustee
2850 S Jones Blvd,
Las Vegas, NV 89146

/s/ Maureen E. Marella _____

Maureen E. Marella

An Employee of Nitz, Walton & Heaton, Ltd.

.....
 ↓2011 Statutes of Nevada, Page 2792 ([Chapter 455, SB 405](#))↓

against any stockholder who, within 30 days after the mailing of notice to the stockholder of the sale, applies to the district court for an appraisal of the value of his or her interest in the assets so sold, and unless within 30 days after the appraisal is confirmed by the court the stockholders consenting to the sale, or some of them, pay to the objecting stockholder or deposit for the objecting stockholder's account, in the manner directed by the court, the amount of the appraisal. Upon the payment or deposit the interest of the objecting stockholder vests in the person or persons making the payment or deposit.

3. In winding up and liquidating the business and affairs of the corporation, the trustees have the duties imposed upon them, and the benefit of the presumptions established, by NRS 78.138.

Sec. 52. NRS 78.746 is hereby amended to read as follows:

78.746 1. On application to a court of competent jurisdiction by ~~††~~ any 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~~ Subject to the provisions of NRS 78.747, this section:

(a) *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 stock of the judgment debtor. No other remedy, including, without limitation, foreclosure on the stockholder's stock or a court order for directions, accounts and inquiries that the debtor or stockholder might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the corporation, and no other remedy may be ordered by a court.*

(b) *Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.*

(c) Applies only to a corporation that:

- (1) Has ~~†more than † but†~~ fewer than 100 stockholders of record at any time.
- (2) Is not a **publicly traded corporation or a** subsidiary of a publicly traded corporation, either in whole or in part.
- (3) Is not a professional corporation as defined in NRS 89.020.

~~†(b)†~~ (d) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

~~†(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.~~

~~—(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.†~~

(e) Does not supersede any ~~†private†~~ written agreement between a stockholder and a creditor if the ~~†private†~~ written agreement does not conflict with the corporation's articles of incorporation, bylaws or any shareholder agreement to which the stockholder is a party.

3. As used in this section, "rights of an assignee" means the rights to receive the share of the distributions or dividends paid by the corporation to which the judgment debtor would otherwise be entitled. The term does not include the rights to participate in the management of the business or affairs of the corporation or to become a director of the corporation.

.....
 ↓2011 Statutes of Nevada, Page 2800 (Chapter 455, SB 405)↓

- (a) The names, addresses, signatures and acknowledgments of the organizers;
- (b) The names and addresses of the past and present members or managers; and
- (c) The information required pursuant to NRS 77.310.

6. *A certificate of amendment or restated articles of organization filed pursuant to this section are effective at the time of the filing of the certificate or restated articles with the Secretary of State or upon a later date and time as specified in the certificate or restated articles, which date must not be more than 90 days after the date on which the certificate or restated articles are filed. If a certificate or restated articles filed pursuant to this section specify a later effective date but do not specify an effective time, the certificate or restated articles are effective at 12:01 a.m. in the Pacific time zone on the specified later date.*

Sec. 68. NRS 86.226 is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the Secretary of State. A person who signs a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the Secretary of State finds that a certificate does not conform to law, upon receipt of all required filing fees the Secretary of State shall file the certificate.

2. A certificate of amendment or judicial decree of amendment is effective ~~upon~~ *at the time of the filing of the certificate or judicial decree* with the Secretary of State or upon a later date *and time as* specified in the certificate or judicial decree, which *date* must not be more than 90 days after the certificate or judicial decree is filed. *If a certificate or judicial decree filed pursuant to subsection 1 specifies a later effective date but does not specify an effective time, the certificate or judicial decree is effective at 12:01 a.m. in the Pacific time zone on the specified later date.*

3. If a certificate *filed pursuant to subsection 1* specifies ~~that~~ *a later effective date or a later effective date and time* and if the resolution of the members approving the proposed amendment provides that one or more managers or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the Secretary of State that:

(a) Is filed before the effective date *and time* specified in the certificate ~~for judicial decree~~ *filed pursuant to subsection 1* ~~or, if the certificate specifies a later effective date but does not specify an effective time, on or before the day preceding the specified later date;~~

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by a manager of the company or, if management is not vested in a manager, a designated member; and

(f) Is accompanied by a filing fee of \$175.

Sec. 69. NRS 86.401 is hereby amended to read as follows:

86.401 1. On application to a court of competent jurisdiction by ~~that~~ *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.*

.....
 ↓2011 Statutes of Nevada, Page 2801 ([Chapter 455, SB 405](#))↓

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.*

Sec. 70. NRS 86.541 is hereby amended to read as follows:

86.541 1. The signed articles of dissolution must be filed with the Secretary of State. Articles of dissolution are effective ~~†upon†~~ *at the time of the filing of the articles with the Secretary of State or upon a later date and time as specified in the articles, which date must not be more than 90 days after the date on which the articles are filed. If the articles filed pursuant to this section specify a later effective date but do not specify an effective time, the articles are effective at 12:01 a.m. in the Pacific time zone on the specified later date.*

2. ~~†Upon†~~ *At the time of the filing of the articles of dissolution †† with the Secretary of State, upon a later date and time as specified in the articles ††, which date must not be more than 90 days after the date on which the articles are filed or, if the articles filed pursuant to this section specify a later effective date but do not specify an effective time, at 12:01 a.m. in the Pacific time zone on the specified later date, whichever is applicable,* the existence of the company ceases, except for the purpose of suits, other proceedings and appropriate action as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of them, are thereafter trustees for the members and creditors of the dissolved company and as such have authority to distribute any property of the company discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the dissolved company.

Sec. 71. NRS 86.547 is hereby amended to read as follows:

86.547 1. A foreign limited-liability company may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a manager of the company or, if management is not vested in a manager, a member of the company. The certificate, which must be accompanied by the required fees, must set forth:

(a) The name of the foreign limited-liability company;

(b) The effective date *and time* of the cancellation if other than the ~~†date†~~ *time* of the filing of the certificate of cancellation ~~†† with the Secretary of State,~~ which *date* must not be more than 90 days after the *date on which the* certificate is filed; and

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MEMORANDUM

TO Senate Judiciary Committee

FROM Robert C. Kim, Chairman of the Executive Committee of the Business Law Section,
State Bar of Nevada

DATE April 5, 2011

RE S.B. 405 – Proposed Amendments to Business Law Statutes

The purpose of this memorandum is to provide a summary of S.B. 405, representing the proposed amendments to the Nevada's business law statutes, as recommended by the Executive Committee, Business Law Section of the State Bar of Nevada. The proposed amendments have been approved by the Board of Governors of the State Bar of Nevada on December 8, 2010.

As background, the proposed amendments address certain portions of Nevada's business law statutes that the members of the Executive Committee have identified as needing clarification or as needing revision in light of the current business environment. Although there was no prevailing theme for the proposed amendments to the Nevada's business law statutes, the proposed revisions were designed to provide greater clarity and functionality to Nevada's business law statutes. In terms of external resources, the Executive Committee generally refers to the Model Business Corporation Act and the business statutes of Delaware, Maryland and other states when appropriate.

The following summary focuses on the proposed amendments of significant substance and excludes any proposed amendments relating to clarifications, typographical/formatting revisions or other minor amendments. Please note that the following summary shall use the numbering used in S.B. 405.

EXHIBIT F Senate Committee on Judiciary

Date: 4-5-11 Page 1 of 1

DMWEST #8161892 v1

1. SECTIONS 1-11, 16-19, 24-26, 58, 64, 72, 78, 92-94 AND 102: ELECTRONIC TECHNOLOGY PROVISIONS [ELS]

In response to recently proposed amendments to the Model Business Corporation Act relating to the use of electric technology provisions, the Executive Committee reviewed these proposed amendments and, as a result, is recommending amendments to NRS Title 7 to reflect the same. In particular, the changes to the definitions and related statutes are based on proposed changes to the Model Business Corporation Act, incorporating concepts and terminology from the Uniform Electronic Transactions Act and the federal E-Sign. For example, it should be clear now that, with these changes, a written consent of directors or stockholders may be in the form of paper or an electronic record. Although the Model Business Corporation Act relates to NRS Chapter 78 and Chapter 92A, the proposed amendments will apply to Nevada's business law statutes generally.

2. SECTIONS 14, 16 AND 30-48 (NRS 78.010; NRS 78.411-78.444): AMENDMENTS TO COMBINATIONS WITH INTERESTED STOCKHOLDER STATUTES [ELS]

Periodically, the Executive Committee reviews certain portions of Nevada corporate law for their relevance and for their features vis-à-vis similar statutes of other states. In its review the Combinations with Interested Stockholder statutes, the Executive Committee analyzed similar statutes from Delaware. In maintaining the current framework of the Combinations with Interested Stockholder statutes, the proposed amendments were drafted primarily to (i) modernize the terminology and defined terms used in the statutes, (ii) clarify potentially vague provisions, (iii) provide a means for a corporation to proceed with a friendly (but otherwise prohibited) combination, so long as sufficient board and stockholder approvals are secured, and (iv) to shorten certain timeframes so as to be more reasonable in light of current business trends. In contrast, the Executive Committee determined that the percentage thresholds should remain the same and not be conformed to the percentage thresholds used in the Delaware statutes. With these amendments, the Combinations with Interested Stockholder statutes will continue to protect Nevada corporations from hostile transactions, while affording directors and stockholders greater flexibility to negotiate and pursue combinations of which they ultimately approve.

3. SECTIONS 15, 49, 51, 63 AND 102 (NRS 78.575-78.620): DISSOLUTION OF CORPORATIONS; LIMITED LIABILITY OF DIRECTORS FOR DISSOLVED CORPORATIONS [RCK]

The Executive Committee is proposing significant amendments to the dissolution provisions of Chapter 78 to provide additional guidance on the fiduciary duties owed by directors of a dissolved corporation and to eliminate the joint and several liability of directors for certain matters relating to the dissolution of the corporation. As to the latter point, the proposed amendments would be to limit the liability of directors so as to not unnecessarily expose directors to such personal liability and to promote the orderly dissolution of corporations. The proposed amendments reviewed the dissolution provisions of the Model Business Corporation Act, Maryland corporate law and Delaware corporate law and reflect language used in each of three above-references statutes.

4. **SECTIONS 20-21, 27-29, 49, 55, 59-62, 65-68, 70, 71, 73-74, 76-77, 79-81, 83, 87:
EFFECTIVE DATE AND TIME FOR FILINGS WITH THE NEVADA SECRETARY
OF STATE [DL]**

The Executive Committee is proposing to clarify various sections of NRS Title 7 to permit entities to state an effective time as well as an effective date for filings as well as a default time if no time is stated in the filing. Since the Nevada Secretary of State already includes the time of filing along with the date of filing in documents submitted to and accepted by the Nevada Secretary of State, the proposed amendment should not generate any additional burden for the Nevada Secretary of State. In addition, the Executive Committee is proposing to set a default effective time of 12:01 a.m. Pacific time for a document that provides for a later effective date but does not specify an effective time.

5. **SECTION 22 (NRS 78.242): CLARIFICATION ON RESTRICTIONS TO
TRANSFER [ELS]**

The proposed amendments are designed to clarify the second sentence of NRS 78.242(2) and to expand on the potential grounds for such restrictions. First, it is possible to read the second sentence of NRS 78.242(2) to mean that a restriction on transfer in the articles or bylaws of a corporation is binding on previously issued stock as long as a majority of the stockholders vote in favor of the restriction. On the contrary, the Executive Committee believes that the intent was to bind only those stockholders who actually voted in favor of the restriction (so if you as an individual stockholder vote against it, the restriction doesn't apply to you). Second, in response to questions received from clients as to whether restrictions to transfer can be adopted relating to net operating losses and gaming laws, the Executive Committee believed it appropriate to specifically provide for additional grounds for restrictions to transfer (as is done under the Delaware statutes).

6. **SECTION 53 (NRS 78.751): AMENDMENTS TO BYLAWS [JPZ]**

The Executive Committee proposes amendments to NRS 78.751 to prohibit the ability to enact retro-active amendments to bylaws relating to indemnification of officers, directors and others acting on behalf of the corporation. It is noted that the corporate statutes of Delaware and other states have been amended in this manner.

7. **SECTION 56 (NRS 80.015): QUALIFYING TO DO BUSINESS [RCK]**

The proposed amendment to NRS 80.015 is based on a long-standing unintended effect of certain amendments adopted in 2007. These amendments unintentionally included institutional lenders/banks making loans on commercial property within the mortgage licensing regime, where the legislative history at the time indicated that the intent was not to do so. The proposed amendment makes clear that institutional lenders/banks are not required to be licensed by the Mortgage Lending Division as a result of making loans secured by commercial property.

7. SECTIONS 52, 69, 75 AND 82 (NRS 78.746, NRS 86.401, NRS 87A.480 AND NRS 88.535): CHARGING ORDER STATUTES [MS/KW]

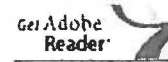
In response to the continuous trend of states to enhance their charging order statutes (such as South Dakota), the Executive Committee considered proposed amendments to the charging order statutes provided for in NRS Chapter 78, Chapter 86, Chapter 87A, and Chapter 88. In addition to governing the right of creditors vis-à-vis the interests owed by a debtor, the charging order statutes are relied upon in the estate planning/wealth preservation context. More specifically, the proposed amendments are designed to clarify the exclusivity of the remedies, maintain the consistency between the charging order statutes of different chapters, and specifically reference single-member limited-liability companies as being subject to these statutes. The Executive Committee notes that the charging order statutes do not apply transactions or arrangements involving a debtor and a consensual lienholder in, for example, a traditional loan transaction.

7. SECTIONS 84-86, 88 AND 90 (NRS 88A): UNIFORM STATUTORY TRUST ENTITY ACT [GB]

The Executive Committee is proposing amendments to NRS 88A in response to the request to consider the Uniform Statutory Trust Entity Act of 2009, as adopted by NCCUSL. After consideration of the policies currently represented by NRS 88A and the scope and breadth of the changes represented by the Uniform Statutory Trust Entity Act of 2009, the Executive Committee elected to propose its own amendments to NRS Chapter 88A rather than adopt some form of the Uniform Statutory Trust Entity Act of 2009. These amendments were based on a review of Delaware trust law and of the proposed uniform act. Based on the proposed amendments, NRS Chapter 88A will maintain its similarities to the Delaware trust laws, but will provide additional guidance as to duties of trustees.

RCK/

SB405



Introduced in the Senate on Mar 28, 2011.

By: Judiciary

Revises provisions governing business entities. (BDR 7-528)

Fiscal Notes View Fiscal Notes

Effect on Local Government: No.

Effect on State: Yes.

Most Recent History Chapter 455.

Action:

(See full list below)

Upcoming Hearings

Past Hearings

Senate Judiciary	Apr 05, 2011 AM	08:00	Agenda	Minutes	No Action
Senate Judiciary	Apr 12, 2011 AM	08:00	Agenda	Minutes	Amend, and do pass as amended
Assembly Judiciary	May 12, 2011 AM	09:00	Agenda	Minutes	No action
Assembly Judiciary	May 20, 2011 AM	08:00	Agenda	Minutes	Do pass

Final Passage Votes

Senate Final Passage	(1st Reprint)	Apr 25, 2011	Yea 21,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
Assembly Final Passage	(1st Reprint)	May 30, 2011	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0

Bill Text As Introduced 1st Reprint As Enrolled

Adopted Amendments Amend. No. 226

Bill History

Mar 28, 2011

- Read first time. Referred to Committee on Judiciary. To printer.

Mar 29, 2011

- From printer. To committee.

Apr 19, 2011

- From committee: Amend, and do pass as amended.

Apr 20, 2011

- Taken from Second Reading File. Placed on Second Reading File for next legislative day.

Apr 22, 2011

SA8

- Read second time. Amended. (Amend. No. 226.) To printer.

Apr 25, 2011

- From printer. To engrossment. Engrossed. **First reprint**.
- Read third time. Passed, as amended. Title approved, as amended. (**Yeas: 21, Nays: None.**) To Assembly.
- In Assembly.

Apr 26, 2011

- Read first time. Referred to Committee on Judiciary. To committee.

May 25, 2011

- From committee: Do pass.
- Placed on Second Reading File.
- Read second time.

May 26, 2011

- Taken from General File. Placed on General File for next legislative day.

May 27, 2011

- Taken from General File. Placed on General File for next legislative day.

May 28, 2011

- Taken from General File. Placed on General File for next legislative day.

May 29, 2011

- Taken from General File. Placed on General File for next legislative day.

May 30, 2011

- Read third time. Passed. Title approved. (**Yeas: 42, Nays: None.**) To Senate.

Jun 05, 2011

- In Senate. To enrollment.

Jun 06, 2011

- Enrolled and delivered to Governor.

Jun 16, 2011

- Approved by the Governor.

Jun 17, 2011

- Chapter 455.
- **Effective October 1, 2011.**

Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #180

Date: 20-Jun-11

From: Steve Leimberg's Asset Protection Planning Newsletter

Subject: Steve Oshins: Nevada Passes New Charging Order Laws

"With the passage of SB405, Nevada has enhanced its creditor protection laws for its LLCs, LPs and corporations. It has done so by expanding its laws to not only make the charging order the exclusive remedy, but to also remove all potential equitable remedies that might apply. The only exception is that the alter ego equitable remedy is still permitted to apply to Nevada corporations.

The new legislation also specifies that creditors of a member of a single member LLC and creditors of a shareholder of a single shareholder corporation are limited to the charging order remedy (other than the alter ego equitable remedy for corporations), thereby distancing itself from the laws of other states."

Now, **Steve Oshins** provides **LISI** members with an important and late-breaking report on the charging order language that he co-authored with Reno attorney **Mark Smallhouse** and Las Vegas attorney **Rob Kim** in SB405.

Steve is happy to report that SB405 passed through the 2011 Nevada legislative session by unanimous vote in both the Senate and the Assembly, and was approved by the Governor on June 16, 2011. Having also authored Nevada's charging order laws in both the 2001 and 2003 legislative sessions, Steve notes that the third time's a charm. Steve would like to thank **Rob Kim** and **Mark Smallhouse** for their work on the charging order portion of the legislative bill, and would like to thank Mr. Kim, Mr. Smallhouse and the rest of the **Executive Committee of the Business Law Section of the State Bar of Nevada** for sponsoring the bill and including the charging order language.

Steven J. Oshins is a member of the Law Offices of **Oshins & Associates, LLC** in Las Vegas, Nevada. Steve is a nationally known attorney who is listed in The Best Lawyers in America® and has been named one of the Top 100 Attorneys in Worth magazine. He was voted into the NAEPC Estate Planning Hall of Fame® and will be inducted in 2011. He is one of the most innovative attorneys in the country as demonstrated by how active he has been in writing some of Nevada's

most important estate planning and creditor protection laws, including the law making the charging order the exclusive remedy of a judgment creditor of a Nevada LLC and LP, the law changing the Nevada rule against perpetuities to 365 years and the law making Nevada the first and only state to allow a Restricted LLC and a Restricted LP. He is also the author of the Annual Domestic Asset Protection Rankings at http://www.oshins.com/images/DAPT_Rankings.pdf. Steve can be reached at 702-341-6000, x2 or at soshins@oshins.com. His law firm's web site is <http://www.oshins.com>.

Here is Steve's commentary:

EXECUTIVE SUMMARY:

The new charging order language in SB405 affects Nevada LLCs, LPs and corporations. The changes to the statutes will be effective on October 1, 2011. This commentary summarizes the key changes made to the statutes, and also reviews planning opportunities that advisors should consider.

FACTS:

Following are the key changes:

1. Single Member LLCs and Single Shareholder Corporations

The new language specifically makes the charging order the exclusive remedy of a judgment creditor for Nevada LLCs, corporations and LPs, specifically including both single member LLCs and single shareholder corporations. A charging order is essentially an order issued by the court granting the judgment creditor a lien over the judgment debtor's interest in the business entity. By specifically making the charging order the exclusive remedy for single member LLCs (and single shareholder corporations), the new Nevada law statutorily negates the problems that have occurred with single member LLCs in cases such as *Ashley Albright* (Colorado, 2003), *A-Z Electronics, LLC* (Idaho, 2006), *In re Modanlo* (Maryland 2006) and *Olmstead* (Florida, 2010).

Through appropriate forum shopping, the asset protection plan can be designed using business entities where the charging order is the

exclusive remedy so that the client's potential creditors will typically be frustrated into settling for pennies on the dollar.

2. No Equitable Remedies

The legislation also adds language to the Nevada LLC, LP and corporation statutes specifying that no other remedies (i.e., no equitable remedies) can apply. This would include equitable remedies such as reverse veil piercing, alter ego, constructive trust and resulting trust theories that may have allowed a judge to circumvent the prior language that the charging order is the exclusive remedy. Note that most states that make the charging order the exclusive remedy of a judgment creditor do not also exclude equitable remedies from applying. Further note that during the legislative session, a negotiated exception was made only with respect to corporations (i.e., no effect on LLCs or LPs) allowing the alter ego theory to be the exclusive equitable remedy to apply to corporations.

3. NRS Chapter 87A Limited Partnership Charging Order Laws Fixed

Nevada has two different limited partnership Chapters - Chapters 87A and 88. Chapter 88 has existed for many years, whereas Chapter 87A was created much more recently in 2007. Asset Protection planners have traditionally used Chapter 88 to form Nevada limited partnerships since Chapter 87A limited partnership statutes did not make the charging order the exclusive remedy, probably as a result of its passage well after Nevada's charging order statutes were modified in 2001 and 2003. The language adopted in SB405 fixes this problem by adopting similar charging order language for both limited partnership Chapters.

COMMENT:

Planning Opportunities

The Nevada charging order laws create numerous planning opportunities. These opportunities assume that Nevada law is applied for charging order purposes.

1. Single Member LLCs: Given the recent case law in at least four jurisdictions, most planners have been reluctant to create single member LLCs since the judge may rule that a single member LLC doesn't get the charging order as the exclusive remedy. Despite this fairly recent drafting trend, a new option is to use a single member LLC, but domicile it in Nevada.

2. Any LLCs or LPs Established in other Jurisdictions: In order to obtain the advantages of Nevada law where the charging order is the exclusive remedy and no equitable remedies can be issued, consider any of the following strategies:

a. Dissolve the existing entity and start over with a Nevada entity. This is simple if the underlying assets are easy to transfer out of one entity and then into another entity. In most cases, this is the best option since it is so simple.

b. Change the existing entity to Nevada law using a statutory conversion (a.k.a., a domestication). For assets that are difficult to move out of one entity and then into another entity, this is a very simple way of switching state law for the entity since it's essentially just a change of state laws without any material disruptions.

c. Merge the existing entity into a new Nevada entity. This is more complex than a statutory conversion and requires a new tax identification number since it's a change in entity. The merger option will be selected if the initial entity's state law doesn't allow statutory conversions. Although a merger is more disruptive than a statutory conversion, the disruption is most likely very small in comparison to the asset protection advantages of merging the entities.

d. Form a Nevada entity as a holding company. This a great solution where there are multiple existing entities formed under the laws of a state which has lesser creditor protection laws. For example, many people have multiple LLCs, each owning one piece of real estate. Just forming one additional Nevada entity to hold the interests in the other entities puts a charging order-only wall around all of the other entities. This is also a solution if a merger is too complex. Instead of a merger, the Nevada entity can own 100% of the already-existing other entity.

3. Corporations: Because of the greater creditor protection traditionally given to LLCs and LPs through the charging order, the national trend has been to use less corporations and more of the other forms of business entity. Despite this trend, there are countless corporations that have already been formed and that are still being formed. Consider obtaining the charging order benefits of a Nevada corporation. Nevada is the only state that makes the charging order the exclusive remedy and thus provides this greater protection. In order to use this protection, one must do one of the following: form a new corporation in Nevada, domesticate (or convert) an existing corporation to Nevada, merge an existing entity into a Nevada corporation or use a Nevada corporation as a holding company. All of these concepts are explained above.

Conclusion:

With the passage of SB405, Nevada has enhanced its creditor protection laws for its LLCs, LPs and corporations. It has done so by expanding its laws to not only make the charging order the exclusive remedy, but to also remove all potential equitable remedies that might apply. The only exception is that the alter ego equitable remedy is still permitted to apply to Nevada corporations.

The new legislation also specifies that creditors of a member of a single member LLC and creditors of a shareholder of a single shareholder corporation are limited to the charging order remedy (other than the alter ego equitable remedy for corporations), thereby distancing itself from the laws of other states.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Oshins

DUNCAN OSBORNE - TECHNICAL EDITOR

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