

## Illinois Business Divorce Report

Information on the dissolution of Illinois corporations, LLCs and partnerships

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### Charging Orders and Illinois LLCs

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When most states passed LLC acts in the 1990s, it was widely believed that LLCs would provide excellent asset protection because any judgment creditor would be limited to getting a “charging order,” under which the most a creditor could do was wait for distributions to be made and then collect those distributions pursuant to the charging order.



Under a charging order, a creditor has the right to collect distributions only. It is a lien on future distributions. “A charging order constitutes a lien on the judgment debtor’s distributional interest.” [805 ILCS 180/30-20\(b\)](#). The judgment creditor cannot force distributions to be made. It has no right to vote the membership interests or otherwise participate in the management of the LLC. [See Bank of America v. Freed, 2012 WL 6725894 \(Ill. App. Ct. Dec. 28, 2012\)](#).

Many early asset protection plans for family businesses and other closely held businesses were based on this simple formula: Transfer the business into an LLC, hold all or most of the interests in the LLC, and maintain all the benefits of the business while limiting the creditors to, at best, an ineffective charging order.

However, some states, such as Illinois, allow the creditor to go one step further. In those states, the creditor may actually foreclose on the charging order or distributional interest. [E.g., 805 ILCS 180/30-20\(b\)](#). The creditor can file a motion to foreclose, requesting that the court appoint someone to sell the interest by scheduling either a public or private sale of it. A foreclosure buyer will have the rights to receive future distributions, but like one holding a charging order, it will not have the right to vote or participate in the LLC.

So is this really a valuable right? That may depend on whether the judgment debtor owns some or all of the membership interests. If the debtor owns just some, is it a majority or a minority interest?

The right to foreclose on a charging order varies from state to state. About a year ago, New Jersey amended its LLC act to eliminate the right to foreclose on a member’s LLC interest. (For more information, follow [this link](#) to the LLC Law Monitor post on the New Jersey amendment.) The New Jersey Act continues to allow a judgment creditor to obtain a charging order, but that is the creditor’s sole remedy.

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