



Creditors' Rights Against Limited Partnership Interests in General

Ask any practitioner what remedies are available to a creditor against a debtor's interest in a limited partnership and that practitioner will undoubtedly say that a "charging order" (which allows a creditor to receive any profits or other money payable to the debtor partner directly

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from the partnership) is the exclusive remedy against the debtor's limited partnership interest. This certainty about remedies is likely because of the wording of Section 703 of the Revised Uniform Limited Partnership Act (1976) as amended in 1985 (the "1976 Act"), which says the following:

§ 703 Rights of Creditor

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner 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 partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

Although the 1976 Act says only that a court “may” charge the partnership interest with the payment of a judgment, some courts have interpreted this section to mean that a charging order is the exclusive remedy against a partnership interest. See, e.g., *91st Street Joint Venture v. Goldstein*, 691 A.2d 272 (Md. Ct. Spec. App. 1997); *In re Pischke*, 11 B.R. 913 (Bankr. E.D. Va. 1981); *Myrick v. Second National Bank of Clearwater*, 335 So. 2d 343 (Fla. Dist. Ct. App. 1976).

From the creditor’s perspective, a charging order is an unattractive remedy because the creditor will receive nothing if there are no distributions to the debtor partner. A more attractive remedy is available to creditors, however, under the civil statutes of most states. This remedy is “foreclosure” upon the interest that is subject to the charging order. A charging order differs from a foreclosure: a foreclosure is permanent, but a charging order is in place only long enough to pay off the debt. A further difference is that the purchaser at a foreclosure enjoys the right to a proportionate share of the partnership’s assets upon dissolution—increasing the creditor’s chances of having the debt satisfied out of the partnership interest.

Changes to Creditors’ Rights in the Uniform Limited Partnership Act of 2001

Section 703 of the 1976 Act is currently subject to amendment by Section 703 of the new Uniform Limited Partnership Act (2001) (the “2001 Act”). Section 703 of the 2001 Act provides for creditors’ remedies against a debtor’s partnership interest. For comparison purposes, the full text of both sections is provided on page 59.

The most significant change that the 2001 Act makes to Section 703 is that, unlike the 1976 Act, it explicitly allows foreclosure upon a judgment

debtor’s partnership interest. By explicitly stating that a court may foreclose upon a partnership interest that is subject to a charging order, the 2001 Act allows no room for an argument that a charging order is an exclusive remedy against a partnership interest. Thus, from an asset protection perspective, the 2001 Act is considerably less protective of a partner’s partnership interest than the 1976 Act.

The Most- and Least-Protective States

Forty-eight states and the District of Columbia have enacted the 1976 Act in some form. Nine of those states have altered Section 703 to provide either more or less protection to a debtor’s partnership interest. In 2000, Delaware rewrote its version of Section 703 to be substantially similar to the 2001 Act’s Section 703, and Nevada followed suit in 2001. Hawaii repealed its version of the 1976 Act entirely on June 26, 2003, and replaced it with the 2001 Act, to be effective July 1, 2004.

The table on pages 60 and 61 compares the states’ and D.C.’s various versions of Section 703. In short, Alaska, Arizona, Oklahoma, and Texas have the most protective statutes, but California, Delaware, Georgia, Nevada, Wisconsin, and now Hawaii have the least protective partnership laws.

The Charging Order May Not Be the Exclusive Remedy in Every State

As stated above, many practitioners believe that under the 1976 Act the charging order is the exclusive remedy for a judgment creditor to satisfy a debt out of a judgment debtor’s partnership interest. This is, in fact, the majority view, despite the fact that the state statutes of all but a few states fail to specifically limit the remedy to a charging order. But the majority view may not be correct in all states that have adopted the Act. See, e.g., *In re Allen*, 228 B.R. 115 (Bankr. W.D. Pa., 1998) (interpreting Pennsylvania’s RULPA provision in light of other remedies available to judgment credi-

tors under Pa. R. Civ. P. 3108(a)(3)). Without explicitly limiting a creditor’s remedy to a charging order, Section 703’s language stating that a court “may” charge the partner’s interest could arguably allow the imposition of other remedies normally available to a judgment creditor under other provisions of state law. Although an analysis of whether jurisdictions that have adopted the 1976 Act provide additional remedies to judgment creditors is outside the scope of this article, it is worth saying that the civil laws of most jurisdictions allow for foreclosure of a creditor’s lien if the lien is not otherwise satisfied. See, e.g., TEX. CIV. PRAC. & REM. CODE § 31.002. For this reason, practitioners should be wary of advising clients that the charging order is the exclusive remedy of a creditor against a partnership interest without first researching this fact themselves. In addition, practitioners should consider carefully whether a partnership is the most effective protection vehicle for their clients, and, if a partnership is the desired vehicle, they should further determine which jurisdiction provides the best forum for the resolution of creditor disputes.

Case Study: How Texas’s Statute Compares to the Other Debtor-Protective States

Texas is generally an attractive jurisdiction for partnerships because it has no state income tax, Texas partnerships are not currently subject to a franchise tax, and a charging order is the sole remedy available against a partnership interest. But two threats to Texas’s position as a leading jurisdiction for attracting partnerships exist.

The first threat is the possibility that the Texas legislature will review the new Uniform Limited Partnership Act and adopt the new Section 703 of the 2001 Act. If it does, then Texas will fall into the category of the least-protective states.

The second threat is that recent amendments to the Limited Partnership Acts in other jurisdictions are more clearly drafted than Texas’s statute and thus arguably provide

more protection against judgment creditors than does the Texas statute. These changes could draw business away from Texas and toward these other states. An analysis of the Texas statute will illustrate this point.

Texas's version of the 1976 Act's Section 703, in what appears to be an internal inconsistency in the statute, provides that the charging order is a creditor's exclusive remedy, yet it states that a charged partnership interest may be redeemed before a foreclosure occurs. TEX. REV. CIV. STAT. ANN. art. 6132a-1, § 7.03. It is difficult not to question why the Texas legislature allowed for redemption of a partnership interest before a foreclosure when the statute explicitly states that the charging order is the exclusive remedy. It is helpful to remember, however, that the Texas statute is one of the first to deviate from the language of the 1976 Act by providing more protection to partnership interests. Notice that, on pages 60 and 61, the jurisdictions that make the charging order the exclusive remedy adopted this language fairly recently (Alaska, 2000; Arizona, 1997; Oklahoma, 1998), but Texas adopted this language when it adopted the Act in 1987. The Texas drafters were faced with a provision in the Texas Civil Practice and Remedies Code that allows a court to "otherwise" apply a judgment debtor's property to the satisfaction of the judgment. TEX. CIV. PRAC. & REM. CODE § 31.002. This broad language would typically allow foreclosure as a remedy. As pioneers into a relatively unexplored area at the time, it could be that the drafters envisioned a case in which a creditor, despite the provision that the charging order is the exclusive remedy, would be able to win an argument that foreclosure is still available against a partnership interest under the Civil Practice and Remedies Code—in which case, the legislators wanted to allow the partnership to redeem the charged interest. But when compared to the statutes of the other debtor-protective states, Texas's belt-and-suspenders approach becomes apparently creditor-friendly.

For instance, Arizona and Oklahoma have amended their statutes to clearly state that a charging order is a judgment creditor's sole remedy against a debtor's partnership interest. Unlike Texas's statute, neither of these states' statutes mentions a foreclosure, which weakens a creditor's argument that foreclosure is still available under other provisions of law. And Alaska made an even clearer statement in its version of Section 703 by further stating that a court may not order a foreclosure against a partner's

partnership interest. This straightforward statute certainly pushes Alaska ahead of Texas in attracting the formation of partnerships.

In sum, practitioners in any state who are interested in the protective nature of partnerships should petition their respective legislatures not to adopt the 2001 Act and to further reword the current statute to be similar to Alaska's to make it absolutely clear that a charging order is the exclusive remedy against a debtor's interest in a limited partnership. ■

Creditors' Remedies Against a Debtor's Partnership Interest Under the 1976 Act and the 2001 Act

<p>Revised Uniform Limited Partnership Act (1976) with the 1985 Amendments</p>	<p>§ 703 Rights of Creditor</p> <p>On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner 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 partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.</p>
<p>The Uniform Limited Partnership Act (2001)</p>	<p>§ 703 Rights of Creditor of Partner or Transferee</p> <p>(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.</p> <p>(b) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.</p> <p>(c) At any time before foreclosure, an interest charged may be redeemed:</p> <p style="margin-left: 20px;">(1) by the judgment debtor;</p> <p style="margin-left: 20px;">(2) with property other than limited partnership property, by one or more of the other partners; or</p> <p style="margin-left: 20px;">(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.</p> <p>(d) This [Act] does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.</p> <p>(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.</p>

Variations of § 703 in States That Have Adopted the Revised Uniform Limited Partnership Act (1976) as Amended in 1985

State/ Statutory Citation	Comparison with RULPA (1976) as Amended in 1985
Alabama Ala. Code § 10-9B-703 (2003)	Same as RULPA 1976 § 703.*
Alaska Alaska Stat. § 32.11.340 (2003)	2000 amendment added a subsection (b): “(b) This section provides the exclusive remedy that a judgment creditor of a general or limited partner or of the general or limited partner’s assignee may use to satisfy a judgment out of the judgment debtor’s interest in the partnership. Other remedies, including foreclosure on the general or limited partner’s partnership interest and a court order for directions, accounts, and inquiries that the debtor general or limited partner might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor’s interest in the limited partnership and may not be ordered by a court.”
Arizona Ariz. Rev. Stat. § 29-341 (2003)	1997 amendment added a final sentence: “This section provides the exclusive remedy by which a judgment creditor of a partner may satisfy a judgment out of the judgment debtor’s interest in the partnership.”
Arkansas Ark. Code Ann. § 4-43-703 (2003)	Same as RULPA 1976 § 703.
California Cal. Corp. Code § 15522 (2003)	As adopted: “(1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.” (2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with the partnership property. (3) The remedies conferred by paragraph one shall not be deemed exclusive of others which may exist. (4) Nothing in this act shall be held to deprive a limited partner of his statutory exemption.”
Colorado Colo. Rev. Stat. Ann. § 7-62-703 (2002)	Same as RULPA 1976 § 703.
Connecticut Conn. Gen. Stat. Ann. § 34-30 (2003)	Same as RULPA 1976 § 703.
Delaware Del. Code Ann. tit. 6, § 17-703 (2003)	As amended in 2000, substantially similar to ULPA 2001 § 703.
Florida Fla. Stat. Ann. § 620.153 (2002)	Same as RULPA 1976 § 703.
Georgia Ga. Code Ann. § 14-9-703 (2002)	As adopted, adds a subsection (b): “(b) The remedy conferred by this Code section shall not be deemed exclusive of others which may exist, including, without limitation, the right of a judgment creditor to reach the interest of a partner in the partnership by process of garnishment served on the partnership.”
Hawaii Formerly Haw. Rev. Stat. § 425D-703	Enacted ULPA 2001, effective July 1, 2004.
Idaho Idaho Code § 53-241 (2003)	Same as RULPA 1976 § 703.

* Statutes designated as the “same” as the 1976 Act are either identical to the Uniform Act’s § 703 or have nonsubstantive variations to that section.

State/ Statutory Citation	Comparison with RULPA (1976) as Amended in 1985
Illinois 805 Ill. Comp. Stat. § 210/703 (2003)	Same as RULPA 1976 § 703.
Indiana Ind. Code § 23-16-8-3 (2003)	Same as RULPA 1976 § 703.
Iowa Iowa Code Ann. § 487.703 (2003)	Same as RULPA 1976 § 703.
Kansas Kan. Stat. Ann. § 56-1a403 (2002)	Same as RULPA 1976 § 703.
Kentucky Ky. Rev. Stat. § 362.481 (2002)	Same as RULPA 1976 § 703.
Louisiana	Has not adopted a uniform act.
Maine Me. Rev. Stat. Ann. tit. 31, § 473 (2003)	Same as RULPA 1976 § 703.
Maryland Md. Code Ann., & Ass’ns. § 10-705 (2003)	Same as RULPA 1976 § 703.
Massachusetts Mass. Gen. Laws. Ann. ch. 109, § 41 (2003)	Same as RULPA 1976 § 703.
Michigan Mich. Comp. Laws. Ann. § 449.1703 (2003)	Same as RULPA 1976 § 703.
Minnesota Minn. Stat. Ann. § 322A.57 (2002)	Same as RULPA 1976 § 703.
Mississippi Miss. Code Ann. § 79-14-703 (2003)	Same as RULPA 1976 § 703.
Missouri Mo. Ann. Stat. § 359.421 (West 2003)	Same as RULPA 1976 § 703.
Montana Mont. Code Ann. § 35-12-1103 (2002)	Same as RULPA 1976 § 703.
Nebraska Neb. Rev. Stat. § 67-273 (2002)	Same as RULPA 1976 § 703.
Nevada Nev. Rev. Stat. § 88.535 (2003)	As amended in 2001, substantially similar to ULPA 2001 § 703.
New Hampshire N.H. Rev. Stat. § 304-B:41 (2002)	Same as RULPA 1976 § 703.
New Jersey N.J. Stat. Ann. § 42:2A-48 (2002)	Same as RULPA 1976 § 703.
New Mexico N.M. Stat. Ann. § 54-2-42 (2002)	Same as RULPA 1976 § 703.
New York N.Y. Partnership Law § 121-703 (2003)	Same as RULPA 1976 § 703.
North Carolina N.C. Gen. Stat. Ann. § 59-703 (2003)	Adds the following after the first sentence: “The general partners shall have no liability to a partner for payments to a judgment creditor pursuant to this provision.”
North Dakota N.D. Cent. Code § 45-10.1-44 (2002)	Same as RULPA 1976 § 703.
Ohio Ohio Rev. Code § 1782.41 (2003)	Same as RULPA 1976 § 703.
Oklahoma Okla. Stat. Ann. tit. 54, § 342 (2002)	1998 amendment added the following sentence before the last sentence: “This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor’s partnership interest.”

Variations of § 703 in States That Have Adopted the Revised Uniform Limited Partnership Act (1976) as Amended in 1985

State/ Statutory Citation	Comparison with RULPA (1976) as Amended in 1985
Oregon Or. Rev. Stat. § 70.295 (2001)	Same as RULPA 1976 § 703.
Pennsylvania 15 Pa. Cons. Stat. Ann. § 8563 (2002)	Same as RULPA 1976 § 703.
Rhode Island R.I. Gen. Laws § 7-13-41 (2002)	Same as RULPA 1976 § 703.
South Carolina S.C. Code Ann. § 33-42-1230 (2002)	Same as RULPA 1976 § 703.
South Dakota S.D. Codified Laws § 48-7-703 (2003)	Same as RULPA 1976 § 703.
Tennessee Tenn. Code Ann. § 61-2-703 (2003)	Same as RULPA 1976 § 703.
Texas Tex. Rev. Civ. Stat. Ann. art. 6132a-1, § 7.03 (Vernon 2003)	As adopted: “(a) On application to a court of competent jurisdiction by a judgment creditor of a partner or other owner of a partnership interest, the court may charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest, may then or later appoint a receiver of the debtor partner’s share of the partnership’s profits and of any other money payable or that becomes payable to the debtor partner with respect to the partnership, and may make all other orders, directions, and inquiries that the circumstances of the case require. To the extent that the partnership interest is charged in this manner, the judgment creditor has only the rights of an assignee of the partnership interest. (b) The partnership interest charged may be redeemed at any time before foreclosure or, in case of a sale directed by the court, may be purchased without a dissolution being caused: (1) with separate property of any general partner, by any one or more of the general partners; or

State/ Statutory Citation	Comparison with RULPA (1976) as Amended in 1985
Texas (cont’d)	(2) with respect to partnership property, by any one or more of the general partners whose interests are not charged, on the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by any general partner whose interest is charged. (c) The remedies provided by Subsection (a) of this section are exclusive of others that may exist, including remedies under laws of this state applicable to partnerships without limited partners. (d) This section does not deprive any partner of the benefit of any exemption laws applicable to that partner’s partnership interest.”
Utah Utah Code Ann. § 48-2a-703 (2003)	Same as RULPA 1976 § 703.
Vermont Vt. Stat. Ann. tit. 11, § 3463 (2003)	Same as RULPA 1976 § 703.
Virginia Va Code Ann. § 50-73.46 (2003)	Same as RULPA 1976 § 703.
Washington Wash. Rev. Code Ann. § 25.10.410 (2003)	Same as RULPA 1976 § 703.
West Virginia W. Va. Code § 47-9-41 (2003)	Same as RULPA 1976 § 703.
Wisconsin Wis. Stat. Ann. § 179.63 (2002)	Deletes the final sentence of RULPA 1976 § 703 regarding the availability of other exemption laws.
Wyoming Wyo. Stat. Ann. § 17-14-803 (2003)	Same as RULPA 1976 § 703.
District of Columbia D.C. Code Ann. § 33-207.05 (2003)	Same as RULPA 1976 § 703.

AD Index

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