

Tick Tock: Election to Opt-Out of Wisconsin's New "Creditor-Friendly" LP And LLC Acts Expire December 31, 2022

Corporate News: A Legal Update

By Mark Kmiecik on November 30, 2022

Effective January 1, 2023, Wisconsin will arguably become a more creditor-friendly state for judgment creditors of an LP partner or LLC member by virtue of the additional rights afforded a judgment creditor under Chapters 179 and 183 of the 2021 Wisconsin Statutes.

Under Wis. Stat. § 179.0703, a judgment creditor of a partner in an LP will effectively possess rights that are somewhat on par with those that are freely assignable by a judgment debtor. Specifically, if a judgment creditor can establish that distributions received under a charging order issued against an LP partner will not satisfy the judgment within a reasonable period of time, the court may order a sale of the judgment debtor's partnership interest via foreclosure.

This foreclosure remedy does not, however, give a judgment creditor the right to become a partner in the LP and there is no threatened loss of the LP's status.

Similarly, under Wis. Stat. § 183.0503, the remedy of foreclosure of a member's interest in an LLC is available to a judgment creditor attempting to satisfy a judgment and may be ordered by a court. Specifically, if a judgment creditor can establish that distributions received under a charging order issued against an LLC member will not satisfy the judgment within a reasonable period of time, the court may order a sale of the membership interest via foreclosure.

As is the case with an LP, this foreclosure remedy does not give a judgment creditor the right to become a member in a **multi-member LLC** and there is no threatened loss of LLC status. However, this limitation is not afforded to a **sole member in a single-member LLC**. Under Wis. Stat. § 183.0705(6), if a court orders a sale of a sole member's interest in an LLC, a transferee of such membership interest will become the new sole member of the LLC and take the full right, title and interest of the judgment debtor in the LLC without having to obtain the consent of anyone (e.g., the judgment debtor) and the judgment debtor will be dissociated as a member in the LLC.

Applicability

Chapters 179 and 183 of the 2021 Wisconsin Statutes apply to all new LPs and LLCs created on or after January 1, 2023, and to all LPs and LLCs created before January 1, 2023, *unless an LP or LLC does one of the following*:

1. Elects to be immediately subject to chs. 179 and 183, as amended by 2021 Wisconsin Act 258, by filing a statement of applicability with the Wisconsin Department of Financial Institutions (Form 399/599) no later than December 31, 2022. This election **is irrevocable** upon filing.
2. Elects continue to be subject to the current, 2019 version of chs. 179 and 183 by filing a statement of nonapplicability with the Wisconsin Department of Financial Institutions (Form 398/598) no later than December 31, 2022. This election **is not irrevocable** upon filing, meaning an LP or an LLC that files a statement of nonapplicability can later elect to be subject the amended chs. 179 or 183 by filing a statement of applicability.

These elections are only available to existing LPs and LLCs and to LPs and LLCs created during the remainder of the 2022 calendar year.

In Summary

Effective January 1, 2023, Wisconsin will arguably become a more creditor-friendly state for a judgment creditor seeking to obtain a charging order to satisfy a debt of a judgment debtor which is an LP partner or an LLC member, **unless** an LP or LLC

(a) files a statement of nonapplicability with the Wisconsin Department of Financial Institutions by December 31, 2022;

(b) converts to an out-of-state LP or LLC (e.g., a Delaware LP or LLC) where a judgment creditor's sole and exclusive remedy is a charging order; or

(c) in the case of a single-member LLC, such LLC adds a new unrelated member to cause the single-member LLC to be treated as a multi-member LLC for purposes of the LLC Act.

Finally, if asset protection is of paramount concern, organizers of an LP or an LLC may elect to form and organize as an out-of-state LP or LLC where a judgment creditor's sole remedy is a charging order. In addition to asset protection, there are many other factors to consider when determining if an LP or LLC should opt-in or opt-out of Wisconsin's new LP and LLC Acts by December 31, 2022.

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