



ATTORNEYS AT LAW

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**CHARGING ORDERS AND NORTH CAROLINA: HOW TO GET AT A DEBTOR'S  
LLC INTEREST**

In North Carolina, a judgment creditor will want to explore, investigate, and potentially use any and every judgment collection tool in the proverbial judgment collection “toolbox” to recover on a judgment. One avenue a judgment creditor should consider is a charging order, which impacts a judgment debtor’s personal interest in a limited liability company (LLC). In North Carolina, the charging order is a creature of the North Carolina Limited Liability Act, which provides defined, set parameters for (1) when a charging order is valid and (2) the extent of relief it provides a judgment creditor.

“On application to a court of competent jurisdiction by any judgment creditor of an interest owner, the court may charge the economic interest of an interest owner with the payment of the unsatisfied amount of the judgment with interest.” N.C.G.S. § 57D-5-03(a). To this end, “the judgment creditor has only the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.” *Id.* Under North Carolina law, such remedy takes the form of charging order, which “is a lien on the judgment debtor's economic interest” and “the exclusive remedy by which a judgment creditor of an interest owner may satisfy the judgment from or with the judgment debtor's ownership interest.” N.C.G.S. § 57D-5-03(b), (d).

The North Carolina Limited Liability Company Act is clear that, in order to pursue and be entitled to a charging, Plaintiff must be a valid judgment creditor with a valid judgment against the judgment debtor. N.C.G.S. § 57D-5-03(b). Furthermore, the Act is unambiguous in declaring that such is the “exclusive remedy by which a judgment creditor” may seek relief. N.C.G.S. § 57D-5-03(d). Thus, to get at any possible relief and satisfaction of judgment creditor’s judgment via judgment debtor’s LLC interest, a charging order and a charging order alone is the required vehicle.

### **The Upside to a Charging Order**

A charging order effectively ties up a judgment debtor’s interest in any distribution, profits, assignments, and the like that he may wish to take from the LLC and if the judgment debtor chooses to take said amounts from the LLC, the judgment creditor will be entitled to any and all sums until the judgment is satisfied. Thus, for example, if the subject LLC has real estate, which it sells and subsequently distributes the proceeds of that sale to its members, including judgment debtor, judgment creditor would be entitled to receive that distribution and the LLC would be required to make said payment as it would have notice of the charging order. In that vein, a charging order has nuisance value that may propel a judgment debtor to satisfy the judgment through other means. It limits the personal profitability and economic benefit that a judgment debtor will almost certainly seek to extract from the LLC, making it in a judgment debtor’s best interest to satisfy the outstanding judgment

### **The Downside to a Charging Order**

The downside is that charging orders are limited in what rights and relief they afford you. It only impacts the economic interest a judgment debtor has in the LLC. In contrast, it does not implicate and cannot affect the judgment debtor's membership interest. The result is that the judgment creditor cannot step into the shoes of the judgment debtor and control his voting stake and/or managerial rights in the LLC. The judgment creditor cannot force money to be paid out to judgment debtor for judgment creditor to collect. Depending on the structure of the LLC and the number of members, a judgment debtor can keep amounts within the LLC and used for LLC purposes, thereby frustrating the economic realization from the charging order. The nuisance value remains, but the ability to reach monetary amounts to satisfy the judgment is minimized.

### **Summary**

Under North Carolina law, a charging order is a tool a judgment creditor should be aware of and explore if the judgment debtor has interest in LLCs. It is a potentially powerful tool that may lead to additional amounts for the judgment creditor. However, any judgment creditor must likewise be aware of the limitations of its efficacy and that there are ways by which a judgment debtor may potentially frustrate its purposes. Knowing this information will allow a judgment creditor to determine whether it is worthwhile to seek a charging order in their matter.

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