

# ASSET PROTECTION UPDATE

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## STRATEGIES TO PROTECT BUSINESS ASSETS AND PERSONAL NET WORTH



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### **GAME CHANGER: Single Member Limited Liability Companies No Longer Asset Protected In Florida**

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On June 24, 2010 the Florida Supreme Court eviscerated the concept of asset protection utilizing single member Limited Liability Companies (“LLCs”).

The Florida Supreme Court held in *Shaun Olmstead v. Federal Trade Commission*, (the “*Olmstead Case*”) that a Court may “order a judgment-creditor to surrender all right, title and interest in the debtor’s single member limited liability company to satisfy an outstanding judgment.”

This holding means that using a single member LLC for asset protection purposes can no longer in and of itself be relied upon as providing protection against claims of the single member’s creditors.

The Florida Supreme Court now permits judgment creditors to levy upon a single member’s membership interest in a Florida LLC. The result of such levy gives the judgment creditor the

ability to actually become the owner of the limited liability company with all ownership rights and benefits including but not limited to, (i) ability to continue operating the LLC; (ii) liquidating the LLC or (iii) selling some or all of the LLC’s assets.

This is yet another example of creditor friendly Courts across the country circumventing statutory law resulting in favorable determinations for creditors. A ruling by the United States Bankruptcy Court in the 2003 Colorado case known as the “Albright Case” was the harbinger of a trend to disregard single member LLCs for asset protection purposes. In the Maryland case of *In Re: Modanlo the United States Bankruptcy Court* in 2006 followed the reasoning set forth in Albright.

Further, in 2002 the United States Supreme Court in the case of *U.S. v. Craft*, 122 S. Ct. 114 expanded a creditor’s ability under

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certain circumstances, to avoid the traditional protection afforded ownership of assets as tenants by the entirety with the result being a diminution in the protection afforded by tenants by the entirety ownership.

Now, with the stroke of its pen, the Florida Supreme Court has put single member LLC owners on notice to take this holding and its implications very seriously. Owners of single member LLCs should immediately consult with their advisors to determine how to best restructure ownership of the single member LLC in order to avoid possible disastrous

asset protection consequences based on the *Olmstead* Holding.

Alternative asset protection planning vehicles should be considered in lieu of the single member LLC.

Each client's case is conditioned upon facts and circumstances unique to that client and the client's planning needs. Please contact me if you or your clients need additional information on asset protection planning matters in light of problem situations occasioned by the *Olmstead* Holding.



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