

**HB**

**222**

# Alaska State Legislature



## House of Representatives House Judiciary Committee

### SPONSOR STATEMENT HB 222

#### **Explanation of Proposed Amendments to Alaska Revised Limited Partnership Act and Alaska Revised Limited Liability Act**

Limited partnerships and limited liability companies are often used for closely-held businesses or investment activities. They are frequently used by families. One of the key advantages of these business entities is that the partners or members can choose who will be their business associates, and can be secure that the venture will continue until an agreed time or event.

If a creditor obtains a judgement against a partner or member, the statutes provide that the creditor can obtain a "charging order" against the debtor's partnership or limited liability company interest. This allows the creditor to receive the distributions to which the partner or member would be entitled.

On its face, these statutes do not expressly allow for any other creditor remedies. This is consistent with the concept that the other partners of a partnership or members of a limited liability company should not have their business or investment actively disrupted, nor should they be forced to take in a substitute partner or member (e.g., the judgement creditor). This was the generally understood position taken by the Uniform Limited Partnership Act and many limited liability acts.

However, recently a Connecticut court held that a judgement creditor of a limited partnership could foreclose on the partnership interest. This holding was in conflict with a prior Florida court decision which held that foreclosure was not an available remedy for a judgement creditor of a limited partner. Such foreclosure would allow the judgement creditor to become a partner of the limited partnership, or a member of the limited liability company. Depending on the provisions of the partnership agreement or operating agreement, this could result in a forced dissolution of the entity and sale of its assets. Such a result could be very harmful to the other partners or members.

The proposed amendments make it clear that a judgement creditor of an Alaska limited partnership or limited liability company has only the remedy of a charging order. Thus, the

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creditor will receive all distributions made to the debtor or debtor partner or member. However, the right to receive such distribution is the judgement creditor's only remedy. No other remedies are available to the judgement creditor or to a court implementing a creditor's collection request.

The Alaska Revised Limited Partnership Act is amended by changes to AS 32.11.170, .340, and .890. The Alaska Revised Limited Liability Act is amended by changes to AS 10.50.380. This amendment will be effective immediately.