

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 639

Introduced by Schumacher, 22.

Read first time January 19, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to limited liability companies; to amend sections
2 21-112, 21-118, 21-142, and 21-2654, Revised Statutes
3 Cumulative Supplement, 2010; to change provisions
4 relating to articles of organization and charging orders;
5 to harmonize provisions; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-112, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 21-112 (ULLCA 112) (a) An operating agreement may specify
4 that its amendment requires the approval of a person that is not a
5 party to the operating agreement or the satisfaction of a condition.
6 An amendment is ineffective if its adoption does not include the
7 required approval or satisfy the specified condition.

8 (b) The obligations of a limited liability company and
9 its members to a person in the person's capacity as a transferee or
10 dissociated member are governed by the operating agreement. ~~Subject~~
11 ~~only to any court order issued under subdivision (b)(2) of section~~
12 ~~21-142 to effectuate a charging order, an~~ An amendment to the
13 operating agreement made after a person becomes a transferee or
14 dissociated member is effective with regard to any debt, obligation,
15 or other liability of the limited liability company or its members to
16 the person in the person's capacity as a transferee or dissociated
17 member.

18 (c) If a record that has been delivered by a limited
19 liability company to the Secretary of State for filing and has become
20 effective under the Nebraska Uniform Limited Liability Company Act
21 contains a provision that would be ineffective under subsection (b)
22 of section 21-110 if contained in the operating agreement, the
23 provision is likewise ineffective in the record.

24 (d) Subject to subsection (c) of this section, if a
25 record that has been delivered by a limited liability company to the

1 Secretary of State for filing and has become effective under the act
2 conflicts with a provision of the operating agreement:

3 (1) the operating agreement prevails as to members,
4 dissociated members, transferees, and managers; and

5 (2) the record prevails as to other persons to the extent
6 they reasonably rely on the record.

7 Sec. 2. Section 21-118, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 21-118 (ULLCA 202) (a) A certificate of organization may
10 be amended or restated at any time.

11 (b) To amend its certificate of organization, a limited
12 liability company must deliver to the Secretary of State for filing
13 an amendment stating:

14 (1) the name of the company;

15 (2) the date of filing of its certificate of
16 organization; and

17 (3) the changes the amendment makes to the certificate as
18 most recently amended or restated.

19 (c) To restate its certificate of organization, or
20 articles of organization if filed prior to January 1, 2011, a limited
21 liability company must deliver to the Secretary of State for filing a
22 restatement, designated as such in its heading, stating:

23 (1) in the heading or an introductory paragraph, the
24 company's present name and the date of the filing of the company's
25 initial certificate of organization, or articles of organization if

1 filed prior to January 1, 2011;

2 (2) if the company's name has been changed at any time
3 since the company's formation, each of the company's former names;
4 and

5 (3) the changes the restatement makes to the certificate
6 or articles as most recently amended or restated.

7 (d) Subject to subsection (c) of section 21-112 and
8 subsection (c) of section 21-121, an amendment to or restatement of a
9 certificate of organization, or articles of organization if filed
10 prior to January 1, 2011, is effective when filed by the Secretary of
11 State.

12 (e) If a member of a member-managed limited liability
13 company, or a manager of a manager-managed limited liability company,
14 knows that any information in a filed certificate of organization was
15 inaccurate when the certificate was filed or has become inaccurate
16 owing to changed circumstances, the member or manager shall promptly:

17 (1) cause the certificate to be amended; or

18 (2) if appropriate, deliver to the Secretary of State for
19 filing a statement of change under section 21-114 or a statement of
20 correction under section 21-122.

21 Sec. 3. Section 21-142, Revised Statutes Cumulative
22 Supplement, 2010, is amended to read:

23 21-142 ~~(ULLCA 503)~~ (a) ~~On application by a judgment~~
24 ~~creditor of a member or transferee, a court may enter a charging~~
25 ~~order against the transferable interest of the judgment debtor for~~

1 ~~the unsatisfied amount of the judgment. A charging order constitutes~~
2 ~~a lien on a judgment debtor's transferable interest and requires the~~
3 ~~limited liability company to pay over to the person to which the~~
4 ~~charging order was issued any distribution that would otherwise be~~
5 ~~paid to the judgment debtor.~~

6 ~~(b) To the extent necessary to effectuate the collection~~
7 ~~of distributions pursuant to a charging order in effect under~~
8 ~~subsection (a) of this section, the court may:~~

9 ~~(1) appoint a receiver of the distributions subject to~~
10 ~~the charging order, with the power to make all inquiries the judgment~~
11 ~~debtor might have made; and~~

12 ~~(2) make all other orders necessary to give effect to the~~
13 ~~charging order.~~

14 ~~(c) Upon a showing that distributions under a charging~~
15 ~~order will not pay the judgment debt within a reasonable time, the~~
16 ~~court may foreclose the lien and order the sale of the transferable~~
17 ~~interest. The purchaser at the foreclosure sale only obtains the~~
18 ~~transferable interest, does not thereby become a member, and is~~
19 ~~subject to section 21-141.~~

20 ~~(d) At any time before completion of the foreclosure sale~~
21 ~~under subsection (c) of this section, the member or transferee whose~~
22 ~~transferable interest is subject to a charging order under subsection~~
23 ~~(a) of this section may extinguish the charging order by satisfying~~
24 ~~the judgment and filing a certified copy of the satisfaction with the~~
25 ~~court that issued the charging order.~~

1 ~~(e) At any time before completion of the foreclosure sale~~
2 ~~under subsection (e) of this section, a limited liability company or~~
3 ~~one or more members whose transferable interests are not subject to~~
4 ~~the charging order may pay to the judgment creditor the full amount~~
5 ~~due under the judgment and thereby succeed to the rights of the~~
6 ~~judgment creditor, including the charging order.~~

7 (ULLCA 503) (a) On application to a court of competent
8 jurisdiction by any judgment creditor of a member or transferee, the
9 court may charge the transferable interest of the judgment debtor in
10 the limited liability company with payment of the unsatisfied amount
11 of the judgment with interest. To the extent of the amounts so
12 charged, the judgment creditor has only the rights of the transferee
13 to receive any distribution to which the judgment debtor would
14 otherwise have been entitled with respect to the interest of the
15 judgment debtor in the limited liability company.

16 (b) A charging order entered pursuant to this section
17 constitutes a lien on the judgment debtor's transferable interest in
18 the limited liability company.

19 ~~(f)~~~~(c)~~ The Nebraska Uniform Limited Liability Company
20 Act does not deprive any member or transferee of the benefit of any
21 exemption laws applicable to the member's or transferee's
22 transferable interest.

23 ~~(g) This section provides the exclusive remedy by which a~~
24 ~~person seeking to enforce a judgment against a member or transferee~~
25 ~~may, in the capacity of judgment creditor, satisfy the judgment from~~

1 ~~the judgment debtor's transferable interest.~~

2 (d) The entry of a charging order pursuant to this
3 section is the exclusive remedy by which a judgment creditor of a
4 member or transferee may satisfy a judgment out of the judgment
5 debtor's interest in the limited liability company.

6 (e) No creditor of a member of a limited liability
7 company shall have any right to obtain possession of, or otherwise
8 exercise legal or equitable remedies with respect to, the property of
9 the limited liability company.

10 (f) A third party shall not be liable to a judgment
11 creditor for distributions made by such third party directly to the
12 judgment debtor that were made in good faith at the direction of the
13 limited liability company.

14 (g) This section applies to all limited liability
15 companies authorized under the Nebraska Uniform Limited Liability
16 Company Act.

17 Sec. 4. Section 21-2654, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 21-2654 (1) On application to a court of competent
20 jurisdiction by any judgment creditor of a member or transferee, the
21 court may charge the transferable interest of the judgment debtor in
22 the limited liability company with payment of the unsatisfied amount
23 of the judgment with interest. To the extent of the amounts so
24 charged, the judgment creditor has only the rights of the transferee
25 to receive any distribution to which the judgment debtor would

1 otherwise have been entitled with respect to the interest of the
2 judgment debtor in the limited liability company.

3 (2) A charging order entered pursuant to this section
4 constitutes a lien on the judgment debtor's transferable interest in
5 the limited liability company.

6 ~~(3) To the extent necessary to effectuate the collection
7 of distributions pursuant to a charging order in effect under
8 subsection (1) of this section, the court may (a) appoint a receiver
9 of the distribution subject to the charging order, and the receiver
10 shall have the power to make all inquiries the judgment debtor might
11 have made, and (b) make all other orders necessary to give effect to
12 the charging order.~~

13 ~~(4) Upon a showing that distributions under a charging
14 order will not pay the judgment debt within a reasonable time, the
15 court may foreclose the lien and order the sale of the transferable
16 interest. The purchaser at the foreclosure sale only obtains the
17 transferable interest and does not become a member of the limited
18 liability company.~~

19 ~~(5) At any time before completion of the foreclosure sale
20 under subsection (4) of this section, the member or transferee whose
21 transferable interest is subject to a charging order under subsection
22 (1) of this section may extinguish the charging order by satisfying
23 the judgment and filing a certified copy of the satisfaction with the
24 court that issued the charging order.~~

25 ~~(6) At any time before completion of the foreclosure sale~~

1 ~~under subsection (4) of this section, a limited liability company or~~
2 ~~one or more members whose transferable interests are not subject to~~
3 ~~the charging order may pay to the judgment creditor the full amount~~
4 ~~due under the judgment and thereby succeed to the rights of the~~
5 ~~judgment creditor, including the charging order.~~

6 ~~(7)–(3)~~ This section does not deprive any member or
7 transferee of the benefit of any exemption laws applicable to the
8 member's or transferee's interest in the limited liability company.

9 ~~(8)~~ This section provides the exclusive remedy by which a
10 person seeking to enforce a judgment against a member or transferee
11 may, in the capacity of judgment creditor, satisfy the judgment from
12 the judgment debtor's transferable interest.

13 (4) The entry of a charging order pursuant to this
14 section is the exclusive remedy by which a judgment creditor of a
15 member or transferee may satisfy a judgment out of the judgment
16 debtor's interest in the limited liability company.

17 (5) No creditor of a member of a limited liability
18 company shall have any right to obtain possession of, or otherwise
19 exercise legal or equitable remedies with respect to, the property of
20 the limited liability company.

21 (6) A third party shall not be liable to a judgment
22 creditor for distributions made by such third party directly to the
23 judgment debtor that were made in good faith at the direction of the
24 limited liability company.

25 (7) This section applies to all limited liability

1 companies authorized under the Limited Liability Company Act.

2 Sec. 5. Original sections 21-112, 21-118, 21-142, and

3 21-2654, Revised Statutes Cumulative Supplement, 2010, are repealed.