



Barbarians at the Gate New Case Defeats Asset Protection of Many Texas FLPs and LLCs¹

If you are using a Texas FLP or LLC to protect your assets from seizure and to deter law suits, new case law may allow that protection to be breached. Here's why and how it happened:

For decades LLCs and FLPs have been the primary means by which Texans protected their assets. In large part that protection was based on law which prevented someone who successfully sued you (judgment creditor) from taking your interest in an LLC or FLP. Over the years Texas courts have made exceptions to that rule. Recently, the Courts cleared a path that provides lawyers a means to seize the assets of many LLCs and FLPs.

Broadly, the ruling stated that a judgment creditor may seize assets of LLCs and FLPs which are either (1) controlled by a single person, or (2) are not "operational businesses". LLCs and FLPs that hold passive investments could be described as non-operational businesses.²

Quite simply, if you have an LLC or FLP which meets these criteria, it may not be functional for asset protection.

Future cases will determine how, to what degree, and under what circumstances FLP/LLC assets are subject to seizure. What we know now is that entities controlled by a single person and entities which are non-operational are at risk.

There are excellent solutions to this problem. Please call if we can assist you.

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¹ This update is informational only. It is not legal advice and should not be acted upon without advice of counsel.

² In *Heckert vs. Heckert, No. 02-16-00213-CV*, the Second District Court of Appeals (Fort Worth) recently issued a Memorandum Opinion. In deciding this case, the Court pushed aside the clear reading of §101.112 and §153.256 of the Texas Business Organizations Code (BOC) which provides that a charging order is the exclusive remedy by which to satisfy a judgment out of the judgment debtor's interest in a LLC/LP(FLP). Specifically, the Court reviewed the question of whether a Court can force a debtor to turn over interests in a FLP and LLC. The appellant argued that §101.112 and §153.256 of the Texas Business Organizations Code provide that a charging order is the "exclusive remedy" to collect on a debtor's partnership interests or LLC interests. The Court stated that as the purpose of charging order exclusivity is to protect the non-debtor members from having their business interfered with, there should be no exclusivity where there are no non-debtor members/partners. They further stated that as neither the FLP nor LLC were operational businesses, no other party's interest would be disrupted by the turnover of assets. We believe this created a pathway whereby creditors may secure the assets of non-operational business despite the fact that they have multiple members or partners. Many FLPs were specifically designed to hold passive investments and are thus non-operational.



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