

The Future Isn't What It Used to Be

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Charging Order History

- Origins in general partnership law
 - Designed to protect interests of other partners
 - ✦ Joint and several liability for partnership obligations
 - ✦ Partner's power to bind partnership
 - ✦ Replaced earlier law allowing creditors of partner to reach partnership property
 - Inherent application to multi-owner entities
 - TBOC 152.308
- Carried over to limited partnership law
 - TBOC 153.256
 - By definition of partner, applies to general partners and limited partners
- Carried over to limited liability company law
 - TBOC 101.112
- Focus on limited liability company law but applies to partnerships as well

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Charging Order Framework

- Who can get a charging order? TBOC 101.112(a)
 - Judgment creditor of a member
 - Judgment creditor of owner of membership interest
 - ✦ Membership interest – TBOC 1.002(54) – includes a member's share of profits and losses or similar items and the right to receive distributions, but does not include a member's right to participate in management.
- Who grants a charging order? TBOC 101.112(a)
 - Court authorized to charge membership interest of judgment debtor
- What is nature of charging order? TBOC 101.112(b)-(f)
 - Right to receive distribution to which judgment debtor otherwise entitled
 - Lien on judgment debtor's membership interest
 - Lien not subject to foreclosure
 - Exclusive remedy to satisfy judgment out of judgment debtor's membership interest
 - No effect on exemption laws applicable to membership interest
 - No right to obtain possession of or exercise remedies against property of LLC

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Devoll v. Demonbreun et al San Antonio COA – 04-14-00331-CV

- Demonbreun and Dowds obtained judgment against Norris Devoll
- Demonbreun and Dowds sought turnover order against Norris Devoll's community property – including wife Paulette's undivided 1/2 interest in 206 Camelia Partnership
- 206 Camelia Partnership owned 50.1% by Gene Devoll and 49.9% by Paulette Devoll
- 206 Camelia Partnership's principal asset was real property valued at ~\$75,000
- Two days after request for turnover order, Gene Devoll notified Paulette Devoll of her default under partnership agreement and ultimately bought out her partnership interest for \$5,000
- Turnover order granted and Norris and Paulette Devoll ordered not to dispose of their community property
- Based on fraudulent transfer claim, Demonbreun and Dowds given temporary injunction ordering Gene Devoll not to "transfer, sell, encumber, or otherwise dispose of the property" owned by 206 Camelia Partnership

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