

By: Elkins

H.B. No. 1417

A BILL TO BE ENTITLED

1 AN ACT

2 relating to foreclosure on a limited partner's partnership
3 interest.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 153.256, Business Organizations Code, is
6 amended to read as follows:

7 Sec. 153.256. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO
8 CHARGING ORDER [~~CHARGE IN PAYMENT OF JUDGMENT CREDITOR~~]. (a) On
9 application [~~to a court~~] by a judgment creditor of a partner or
10 other owner of a partnership interest or of the partner's or owner's
11 assignee, a [~~the~~] court having jurisdiction may[+]

12 [~~(1)~~] charge the partnership interest of the judgment
13 debtor to satisfy the judgment [~~partner or other owner with payment~~
14 ~~of the unsatisfied amount of the judgment, with interest,~~

15 [~~(2)~~] ~~appoint a receiver for the debtor partner's share~~
16 ~~of the partnership's profits and other money payable or that~~
17 ~~becomes payable to the debtor partner with respect to the limited~~
18 ~~partnership; and~~

19 [~~(3)~~] ~~make other orders, directions, and inquiries that~~
20 ~~the circumstances of the case require~~].

21 (b) To the extent that the partnership interest is charged
22 in the manner provided by Subsection (a), the judgment creditor has
23 only the right to receive any distribution to which the judgment
24 debtor would otherwise be entitled in respect [~~rights of an~~

1 assignee] of the partnership interest.

2 (c) A charging order constitutes a lien on the judgment
3 debtor's [The] partnership interest [charged may be:

4 [(1) ~~redeemed at any time before foreclosure, or~~

5 [(2) ~~in case of a sale directed by the court, and~~
6 ~~without constituting an event requiring winding up, purchased:~~

7 [(A) ~~by one or more of the general partners with~~
8 ~~separate property of any general partner, or~~

9 [(B) ~~with respect to partnership property, by one~~
10 ~~or more of the general partners whose interests are not charged, on~~
11 ~~the consent of all general partners whose interests are not charged~~
12 ~~and a majority in interest of the limited partners, excluding~~
13 ~~limited partnership interests held by a general partner whose~~
14 ~~interest is charged].~~

15 (d) The entry of a charging order is the [remedies provided
16 by Subsection (a) are] exclusive remedy by which a judgment
17 creditor of a partner or of a partner's assignee may satisfy a
18 judgment out of the judgment debtor's partnership interest [of
19 other remedies that may exist, including remedies under laws of
20 this state applicable to partnerships without limited partners].

21 (e) This section does not deprive a partner or a partner's
22 assignee of a right under exemption laws with respect to the
23 judgment debtor's partnership interest.

24 (f) A creditor of a partner or of a partner's assignee does
25 not have the right to obtain possession of, or otherwise exercise
26 legal or equitable remedies with respect to, the property of the
27 limited partnership.

1 SECTION 2. Section 7.03, Texas Revised Limited Partnership
2 Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to
3 read as follows:

4 Sec. 7.03. RIGHTS OF JUDGMENT CREDITOR. (a) On application
5 ~~[to a court of competent jurisdiction]~~ by a judgment creditor of a
6 partner, ~~[or]~~ of any other owner of a partnership interest, or of
7 the partner or owner's assignee, the court may charge the
8 partnership interest of the judgment debtor to satisfy the judgment
9 ~~[partner or other owner with payment of the unsatisfied amount of~~
10 ~~the judgment, with interest, may then or later appoint a receiver of~~
11 ~~the debtor partner's share of the partnership's profits and of any~~
12 ~~other money payable or that becomes payable to the debtor partner~~
13 ~~with respect to the partnership, and may make all other orders,~~
14 ~~directions, and inquiries that the circumstances of the case~~
15 ~~require]~~. To the extent that the partnership interest is charged in
16 this manner, the judgment creditor has only the right to receive any
17 distribution to which the judgment debtor would otherwise have been
18 entitled in respect ~~[rights of an assignee]~~ of the partnership
19 interest.

20 (b) A charging order constitutes a lien on the judgment
21 debtor's ~~[The]~~ partnership interest ~~[charged may be redeemed at any~~
22 ~~time before foreclosure or, in case of a sale directed by the court,~~
23 ~~may be purchased without a dissolution being caused:~~

24 ~~[(1) with separate property of any general partner, by~~
25 ~~any one or more of the general partners, or~~

26 ~~[(2) with respect to partnership property, by any one~~
27 ~~or more of the general partners whose interests are not charged, on~~

1 ~~the consent of all general partners whose interests are not charged~~
2 ~~and a majority in interest of the limited partners, excluding~~
3 ~~limited partnership interests held by any general partner whose~~
4 ~~interest is charged].~~

5 (c) The entry of a charging order is the ~~[remedies provided~~
6 ~~by Subsection (a) of this section are]~~ exclusive remedy by which a
7 judgment creditor of a partner or of a partner's assignee may
8 satisfy a judgment out of the judgment debtor's partnership
9 interest ~~[of others that may exist, including remedies under laws~~
10 ~~of this state applicable to partnerships without limited partners].~~

11 (d) This section does not deprive any partner or partner's
12 assignee of the benefit of any exemption laws applicable to the
13 judgment debtor's ~~[that partner's]~~ partnership interest.

14 (e) A creditor of a partner or of a partner's assignee does
15 not have the right to obtain possession of, or otherwise exercise
16 legal or equitable remedies with respect to, the property of the
17 limited partnership.

18 SECTION 3. The changes in law made by this Act apply only to
19 the rights of a judgment creditor of a judgment rendered on or after
20 September 1, 2007. The rights of a judgment creditor of a judgment
21 rendered before that date are governed by the law in effect when the
22 judgment was rendered, and the former law is continued in effect for
23 that purpose.

24 SECTION 4. This Act takes effect September 1, 2007.