CADWALADER

Carey Olsen: Lender Considerations for Delivery of Notice Via Investor Portals

June 4, 2021 | Issue No. 129

Carey Olsen outlined common issues a lender must address when utilizing investor portals as the delivery method for required notices to investors to perfect a capital call security. The firm notes that a lender must deliver notice to the grantor's investors to perfect its capital call security interest. Due to this notice requirement, lenders want to ensure that it has evidence that the investor received this notice.

Carey Olsen provides three items a lender should consider when delivering notice through an investor portal: (1) Does it record whether an investor has accessed the notice? (2) How are investors notified of the posting of the notice, and (3) When are investors notified of the posting of notice?

If the investor portal records when the investor has accessed the notice, lenders will need to be aware that it will not be easy to prove perfection concerning investors who never logged on or accessed the notice. In considering item two, a lender could rely on the email that notifies the investor that a notice has been posted as evidence that the lender adequately notified the investor if the contents of the email provide sufficient details about the posting; however, this reliance may not offer lenders other perfection-related benefits. Lastly, the lender will need to verify when the notice is provided to the investors, as some portals only provide a single post and do not provide additional posting to subsequent investors, which can leave these investors not adequately notified of the security interest.

As lenders consider utilizing investor portals as the delivery method for the notice requirement to perfect a capital call security, they will need to verify that the portal provides sufficient notice to the investors and provides adequate evidence that the lender notified the investor. Cadwalader's Fund Finance Group can help lenders ensure proper notice and perfection of its security interest while navigating this space.

To see Carey Olsen's article, click **here.**