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Fund Finance Friday

Recent Amendments to Delaware Law: What You Need to Know

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The State of Delaware recently made meaningful amendments to the Delaware Revised Uniform Limited Partnership Act ("DRULPA") and the Delaware Limited Liability Company Act ("DLLCA") that will impact fund finance transactions. The amendments became effective on August 1, 2019.

Divide and Conquer Deja Vu

First, Section 17-220 was introduced to the DRULPA to provide for a "division" of a limited partnership in much the same way and with the same effect as its sister provision, DLLCA Section 18-217 (enacted last year), has on Delaware limited liability companies (see our previous article **here** for analysis and recommendations). In short, since the vast majority of fund finance borrowers are Delaware limited partnerships, lenders now need to be aware of the possibility of a partnership division and ensure that negative covenants restrict any division without lender consent, and that any permitted division requires the resulting partnership to join the facility and pledge collateral in the same manner as the dividing partnership.

Why So Serious

Second, Delaware enacted legislation to provide for a concept of a "registered series" under DLLCA Section 18-218 and DRULPA Section 17-221. Delaware limited liability companies and partnerships have for years been able to form multiple "series" to segregate assets and liabilities. These older series have been renamed a "protected series" and now have the ability to convert into a "registered series." The legislation was intended to clean up ambiguity around the perfection of security interests related to a protected series, which are not separate legal entities. A registered series will be a registered entity under Delaware law, have its own certificate of good standing issued by the Delaware Secretary of State and qualify as a "registered organization" for Uniform Commercial Code ("UCC") purposes. Thus, lenders taking a security interest over assets of a registered series will simply file a UCC-1 financing statement in the name of the registered series.