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Structured Finance Fact Sheet

Springing Members

The Basics

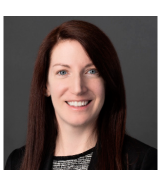
- Springing Members are a tool that a structured finance Lender can use to reduce the risk that a Borrower will dissolve under state law.
- Under most state laws, an LLC that does not have at least one member will dissolve. The risks of a state law dissolution proceeding are similar to those of a bankruptcy, and typically involve the liquidation of the LLC's assets and the distribution of proceeds in accordance with the LLC Agreement.
- Borrowers in structured finance transactions are often single member LLCs. To reduce the risk that the Borrower will be dissolved under state law if the LLC ceases to have a member, Lenders should require the Borrower to have two "Springing Members."
- A Springing Member is a person or entity that signs the Borrower's LLC Agreement for the limited purpose of springing into place as a "Special Member" of the Borrower in the event that the Borrower's existing member ceases to be a member for any reason. This mechanism ensures that the Borrower is not dissolved under state law for lack of a member.

How it Works

- Springing Members should be used for every Borrower that is a single member LLC.
- In transactions where the Borrower is required to have Independent Directors,* the Independent Directors typically fill the Springing Member role. However, the Springing Members do not have to be independent from the Borrower or provided by a nationally recognized provider of Independent Directors. The Springing Members can be any person or entity in the Borrower's organizational structure, other than its current member.
- Even when a Borrower is not required to have Independent Directors, the Lender should still require Springing Members. Springing Members are an important protection against dissolution of the Borrower and, because they can be any person or entity, the cost of having Springing Members can be very low.
- The Borrower's LLC Agreement should provide that upon the occurrence of any event that causes the Borrower's member to cease to be a member of the Company, the Springing Members shall automatically become Special Members of the Company and continue the Company without dissolution. The Springing Members should be a signatory to the LLC Agreement so that no further action on the part of the Springing Members is required for these provisions to work.
- The Special Members do not receive any economic interest in the Borrower, and do not have any interest in the profits, losses or capital of the Borrower. Special Members have no right to receive distributions from the Borrower, and are not required to make any capital contributions to the Borrower.
- Except as required by mandatory provisions of applicable state law, the Special Members do not have any right to vote on matters with respect to the Borrower, so they do not have general control over the Borrower's business affairs.
- The Borrower's LLC Agreement should also provide that within 90 days after the date on which the member ceases to be a member of the Company, the personal representative of the member (or its designee) shall become the member of the Borrower.
- The Special Members automatically cease to be members of the Borrower upon the admission of a substitute member of the Borrower.

**See "Structured Finance Fact Sheet: Independent Directors for Special Purpose Entity Borrowers" (February 2021).*

For more information on these issues, contact:



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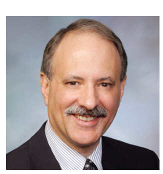

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Practice Tips

- Borrowers that are limited partnerships face similar dissolution risk. A limited partnership will dissolve if it does not have both a limited partner and a general partner.
- A "Springing Limited Partner" can be used for any limited partnership Borrower. The Springing Limited Partner will spring into place as a "Special Limited Partner" of the Borrower in the event that the Borrower's existing limited partner ceases to be a limited partner for any reason.
- The general partner of a Special Purpose Entity Borrower should be a Special Purpose Entity that has Springing Members. The general partner's Springing Members reduce the risk that the general partner will be dissolved under state law, which in turn reduces the risk that the Borrower will be dissolved for lack of a general partner.