

2019 Delaware Entity Statutory Amendments

by Amelia R. Messa

This year's amendments to the Delaware entity statutes became effective on August 1, 2019. These included amendments to the Delaware Limited Liability Company Act (the "LLC Act"), the Delaware Revised Uniform Limited Partnership Act (the "DRULPA"), the Delaware Revised Uniform Partnership Act (the "DRUPA") and the Delaware General Corporation Law (the "DGCL"). There were no amendments this year to the Delaware Statutory Trust Act.

Use of Electronic Signatures

The amendments to the LLC Act, the DRULPA, the DRUPA and the DGCL added new sections to each of the statutes that establish non-exclusive, safe harbor methods to reduce certain acts or transactions to a written or electronic document and to sign and deliver a document manually or electronically. Included in these amendments is language that permits transactions to be documented, signed and delivered using "DocuSign" and similar electronic means. Notably, an LLC, limited partnership, general partnership or corporation can only opt out of the application of the safe harbor provisions if its governing documents expressly restrict the use of electronic documentation or signing or delivering of a document electronically.

Division Amendments

This year's amendments to the DRULPA added a new Section 17-220 to provide for a "division" of a limited partnership. Generally, a division is a newly permitted form of reorganization in Delaware that allows a Delaware limited partnership to divide into two or more Delaware limited partnerships. The division concept for a limited partnership is largely analogous to the division of an LLC, which was a concept added to the LLC Act in 2018 allowing a Delaware LLC to divide into two or more Delaware LLCs. A few clean up and clarifying amendments were also made this year to the LLC Act with respect to divisions of LLCs.

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Series Amendments

The amendments this year to the DRULPA built in similar provisions relating to "series" limited partnerships that were approved last year for Delaware LLCs. Some of the highlights to these amendments include:

- The creation of three different types of "series" of limited partnerships, including:
 - A contractual "series" that does not enjoy statutorily provided separateness and limitations on liability, but is instead what is often seen when various classes of partnership interests are created and referred to as "series" of interests in a limited partnership agreement.
 - A "protected series," which is a designated series of limited partners, general partners, partnership interests or assets that is established in accordance with Section 17-218(b) of the DRULPA, which statutorily provides inter-series limitations on liabilities to each protected series. Protected series are the same as traditional "series" that were created prior to the amendments under the old version of Section 17-218(b) of the DRULPA.
 - A "registered series," which is a designated series of limited partners, general partners, partnership interests or assets that is formed under the new Section 17-221 of the DRULPA, which allows for the same inter-series limitations on liability as a protected series, but also allows the series to register in Delaware by filing a certificate of registered series with the Secretary of State of the State of Delaware. Importantly, the amendments allow a registered series to be a "registered organization" under the UCC. These changes, along with certain amendments approved last year to the Delaware UCC, clarify that a registered series can be a "debtor" for purposes of filing a UCC-1 and perfecting a security interest.
- Protected series are permitted to convert into registered series, and registered series are permitted to convert into protected series.
- Registered series are permitted to merge with and into each other.
- Certificates of good standing are obtainable for a registered series.
- Registered series are required to pay an annual franchise fee to the State of Delaware of \$75 per registered series, which is due and payable at the same time as the annual franchise taxes for a limited partnership, on June 1st of each year.

There were also a few minor amendments to the LLC Act to clarify certain things relating to series LLCs, along with amendments to all three alternative entity statutes relating to distinguishing the names of registered series from other Delaware entities.

The amendments that were passed last year to the series provisions of the LLC Act also went into effect this year on August 1.

Public Benefit Amendments

The amendments to the DRULPA also added a new subchapter XII to the DRULPA that creates a concept of a "Statutory Public Benefit Limited Partnership" which, like a public benefit corporation, is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. The amendments set forth the requirements to form and manage a statutory public benefit limited partnership. These requirements largely mirror those for forming and managing a statutory public benefit

LLC that were adopted last year.

Amendments Allowing Cancellation for Misuse

The amendments to the DRULPA added a new Section 17-112 to provide that, upon a motion by the Attorney General of the State of Delaware, the Court of Chancery may cancel a certificate of limited partnership of a limited partnership for abuse or misuse of its limited partnership powers, privileges or existence.

Blockchain Amendments

Similar to the amendments last year to the LLC Act and the DRULPA, the amendments to the DRUPA this year provided specific statutory authority for Delaware general partnerships to use networks for electronic databases for the creation and maintenance of records and for certain electronic transactions.

Registered Agent Resignation

The amendments also provided registered agents of Delaware LLCs, limited partnerships, general partnerships and corporations with the ability to resign without appointing a successor registered agent when the filing used to form the entity in Delaware has been cancelled. This could occur when an entity has failed to pay its annual franchise taxes and fees.

Corporate Notices

This year's amendments to the DGCL expanded the ability of a Delaware corporation to use electronic communication, including the ability to send notices to a stockholder's email address as it appears on the corporation's records without first obtaining the consent of such stockholder, unless such stockholder specifically objects in writing to receiving email notifications. The amendments relating to notices apply to any notice required by the DGCL, the charter or the bylaws, however, they do not change any other notice requirements to which a corporation may be bound.