YOUNG CONAWAY

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The Delaware LP and LLC Acts Have Recently Been Amended to Clarify the Kinds of Series That Can Be Established, Among Other Changes

By Lauren M. McCrery and Daniel M. Cole

Effective August 1, 2026, the Delaware Revised Uniform Limited Partnership Act (the "**DRULPA**") and the Delaware Limited Liability Company Act (the "**DLLCA**") have been amended to make clear that an LP or an LLC can establish series that are neither protected nor registered, and to enable a former general partner of an LP to remove its name from the certificate of limited partnership, among other amendments.[1]

Possible Kinds of LP and LLC Series

Since 1996 the DRULPA and the DLLCA have permitted LPs and LLCs to establish separate "series" of ownership interests, of general or limited partners (of an LP), or of members or managers (of an LLC).[2] One benefit of the series structure is that it enables LPs and LLCs to limit the assets against which creditors can enforce claims. If certain prerequisites are met, creditors of a series will be unable to reach LP or LLC assets beyond the assets associated with that series, and likewise, the assets of the series will not be available to satisfy claims against the LP or LLC as a whole.[3] The term "protected series" was later added to the DRULPA and the DLLCA to refer to series whose assets are subject to such shielding from creditor claims.[4]

The formation of "registered series" of LPs and LLCs first became possible in 2019.[5] In addition to having the advantages of the series that could already be established, registered series are "registered organizations" under Article 9 of the UCC, with the result that a secured party can perfect security interests in most assets of such series by filing a financing statement in Delaware.[6]

The 2026 amendments have confirmed that the DRULPA and DLLCA provisions on series do not "limit the establishment of a series that is not a protected series or a registered series."[7] While this proposition was previously implied by the Acts, it was not clearly stated. The quoted language replaces a reference to "the principle of freedom of contract," but the legislative synopses that accompany the amendments explain that they are "not intended to limit the application of the principle of freedom of contract to any series."[8]

The 2026 amendments relating to series have also confirmed that even though **series** themselves may merge, convert, or consolidate only pursuant to the statutory sections dealing specifi-

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cally with such transactions involving series, this limitation is not intended to prevent **LPs with series or LLCs with series** "from merging, converting or consolidating pursuant to any section of [Title 6] or as otherwise permitted by law."[9]

Amendment of a Certificate of Limited Partnership by a Former General Partner

The certificate of limited partnership that is filed with the Delaware Secretary of State when an LP is formed must contain, among other things, "[t]he name and the business, residence or mailing address of each general partner," and must be signed by each general partner.[10] Moreover, if a general partner becomes aware that a change of circumstances has made the certificate of limited partnership "false in any material respect," the general partner is obligated to amend it "promptly."[11] If the change of circumstances is the withdrawal of a general partner or the admission of a new general partner, the corrective amendment must be made within 90 days thereafter.[12]

Before the 2026 amendments, a person that had ceased to be a general partner had no means of taking its name off the certificate of limited partnership if the remaining or successor general partner(s) neglected to do so despite the statutory requirement. That situation has now been addressed. New provisions added to DRULPA § 17-202 authorize a former general partner to unilaterally amend the certificate of limited partnership when it still contains the former general partner's name. A certificate of amendment filed solely for this purpose must state the name of the LP and that the person filing it has ceased to be a general partner of the LP.[13] The certificate of amendment may not make any other amendment.[14]

Similar revisions have been made to the DRULPA provisions dealing with amendment of a certificate of registered series, which is filed with the Delaware Secretary of State when an LP forms a registered series. Like a certificate of limited partnership, a certificate of registered series must set forth the name and address of each general partner associated with the series,[15] and must be amended if a change in circumstances causes it to be incorrect.[16] Amendments to DRULPA § 17-221 now enable a person that has "ceased to be a general partner associated with a registered series" to unilaterally amend the certificate of registered series to remove the person's name.[17]

Amendments Affecting Foreign LPs

To do business in Delaware, a non-Delaware LP must, among other things, submit to the Delaware Secretary of State an application for registration as a foreign LP. The application must include a statement that the foreign LP "validly exists as a limited partnership under the laws of the jurisdiction of its organization."[18] Formerly, this statement had to be made by a general partner, even though the application could be signed by "any person authorized to execute the application on behalf of the foreign limited partnership." The 2026 amendments have removed the requirement that a general partner provide the statement of valid existence. Instead, the statute now provides only that the application must include that statement, with the result that the statement is made by the person signing the application.[19]

A further change involving foreign LPs has been made to the DRULPA section on the potential liability of a general partner for a certificate containing a materially false statement. As previously drafted, DRULPA § 17-207 provided that a general partner could be liable for signing a certificate filed with the Delaware Secretary of State if the general partner knew or should have known that the certificate contained a false statement, or for filing and failing to correct a certificate containing a false statement if the general partner learned of the false statement and had sufficient time to make the correction, or petition to have it made, before a third party reasonably relied on the false statement.

Section 17-207 has now been revised to cover persons other than general partners that may sign a certificate required under the DRULPA sections dealing with foreign LPs, §§ 17-901 to 17-912. Because certificates filed under those sections may be signed by any authorized person, § 17-207 now provides that, in addition to a general partner, any person that signs a certificate under §§ 17-901 to 17-912 may be liable if the certificate contains a false statement. The amendments to § 17-207 have also removed language that could have imposed liability on a general partner that filed, but did not necessarily sign, a certificate containing a false statement.[20]

Increases in Annual Taxes for LPs and LLCs

The annual tax that must be paid to the State on or before June 1 of each year by a Delaware LP or LLC, and by a foreign LP or LLC registered to do business in the State, has been increased from $300 to $400. The annual tax that must be paid by a registered series of a Delaware LP or LLC has been increased from $75 to $100.[21] This is the first increase in the LP and LLC tax since 2014,[22] and the first increase in the registered series tax since registered series originally became available.[23]

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1 Del. H.B. 354, 153d Gen. Assem. (2026) (amending the DRULPA); Del. H.B. 352, 153d Gen. Assem. (2026) (amending the DLLCA).

2 70 Del. Laws ch. 362, § 13 (1996) (LPs); 70 Del. Laws ch. 360, § 9 (1996) (LLCs).

3 6 *Del. C.* § 17-218(b) (LPs), § 18-215(b) (LLCs).

4 82 Del. Laws ch. 46, § 16 (2019) (LPs); 81 Del. Laws ch. 357, § 19 (2018) (LLCs; this amendment did not take effect until 2019 (*id.* § 35)).

5 82 Del. Laws ch. 46, § 18 (2019) (LPs); 81 Del. Laws ch. 357, § 21 (2018) (LLCs; this amendment did not take effect until 2019 (*id.* § 35)).

6 6 *Del. C.* § 17-221 (LPs), § 18-218 (LLCs); UCC § 9-102(a)(71).

7 6 *Del. C.* § 17-218(a) (LPs), § 18-215(a) (LLCs).

8 Del. H.B. 354 syn. § 5, 153d Gen. Assem. (2026) (LPs); Del. H.B. 352 syn. § 2, 153d Gen. Assem. (2026) (LLCs).

9 6 *Del. C.* § 17-218(a) (LPs), § 18-215(a) (LLCs).

10 *Id.* § 17-201(a).

11 *Id.* § 17-202(b).

12 *Id.* § 17-202(c).

13 *Id.* § 17-202(d).

14 *Id.*

15 *Id.* § 17-221(d)(1).

16 *Id.* § 17-221(d)(4)-(5).

17 *Id.* § 17-221(d)(6). Conforming changes have been made to the DRULPA section dealing generally with execution of certificates, *id*. § 17-204.

18 *Id.* § 17-902(1).

19 *Id.*; Del. H.B. 354 syn. § 7, 153d Gen. Assem. (2026).

20 6 *Del. C.* § 17-207(a).

21 *Id.* § 17-1109(a) (LPs), § 18-1107(b) (LLCs).

22 79 Del. Laws ch. 212, §§ 2-3 (2014).

23 82 Del. Laws ch. 46, § 26 (2019) (LPs); 81 Del. Laws ch. 357, § 30 (2018) (LLCs; this amendment did not take effect until 2019 (*id.* § 35)).

Recent Amendments to Delaware's General Corporation Law Include a New Requirement That Dissolving Corporations Consent to Service on the Secretary of State, Among Other Changes

By Craig E. Rushmore and Emily K. Cowan

Recent amendments to the General Corporation Law of the State of Delaware (the "**DGCL**") have added a requirement that when a corporation dissolves, it must agree that the Delaware Secretary of State can accept service of process on the corporation's behalf. This and the other amendments discussed below took effect on August 1, 2026.[1]

Serving Dissolved Corporations by Means of the Secretary of State

The amendments specify a procedure by which a plaintiff can serve process on a Delaware corporation that has dissolved. Under normal circumstances, a Delaware corporation is served by service on its statutorily required registered agent in the State.[2] Amended DGCL § 275 now makes clear, however, that when a corporation dissolves, its registered agent's responsibilities automatically end.[3] Following dissolution, service can now be made on the Secretary of State instead.

Under amended § 275, the corporation must "irrevocably appoint" the Secretary of State as its agent to accept service of process following dissolution "in any proceeding for enforcement" of any of the corporation's obligations.[4] This appointment of the Secretary of State to accept service of process—and the corporation's address to which such process is to be forwarded—must be set forth in the corporation's certificate of dissolution. The amendment to § 275 also specifies how such service is to be made and how the Secretary of State is to handle process, using language that largely tracks existing DGCL provisions for service on the Secretary of State when a non-Delaware entity survives or results from a merger, transfer, or similar transaction.[5]

Clarification of Stockholder Vote Needed to Amend Certificate of Incorporation

The 2026 amendments have clarified the interplay of certain DGCL default rules and opt-outs for amending certificate-of-incorporation provisions for classes of stock.

Under the long-standing default rules of DGCL § 242(b), where a corporation's shares have been divided into classes, a change in the number of shares that a class is authorized to issue must be approved by a majority in interest of the stockholders entitled to vote, regardless of classes, and by a majority in interest of the holders of stock in the class.[6] But § 242(b) also permits a corporation to include in its certificate of incorporation a provision opting out of the class-vote requirement.[7]

In 2023, § 242 was amended by the addition of subsection (d), which changed the default stockholder vote requirements for some types of certificate amendments.[8] Subsection (d)(1) provides that no stockholder vote is required to change the corporation's name, to remove certain provisions that no longer have effect (such as a provision naming the incorporator), or to effect a forward stock split in a class (and proportionately increase the number of authorized shares in the class) when the corporation has only one class of stock outstanding and the class is not divided into series.

Subsection (d)(2) identifies amendments that can be approved with a smaller proportion of stockholder votes than would otherwise be required. Specifically, a reverse split of a class of stock and a change in the authorized number of shares in a class can be approved by a vote at a stockholder meeting where the vote is taken for and against the amendment, and more shares are voted for the amendment than are voted against

it, provided that before the amendment, the shares of the class are listed on a national securities exchange, and after the amendment, they "meet the listing requirements of such national securities exchange relating to the minimum number of holders." Subsection (d)(2) further provides that if the amendment involves a change in the authorized number of shares in a class, and if the corporation has not opted out of the class-vote requirement under § 242(b) (as described above), then the vote permitted under § 242(d) must include a class vote in which the number of shares in the class that are voted for the amendment exceed the number of shares in the class that are voted against it.

Importantly, § 242(d) provides further that its default stockholder-approval requirements do not apply if the certificate of incorporation "expressly" requires otherwise. Some uncertainty therefore arose whether a provision in a certificate of incorporation opting out of the default class-vote requirement under § 242(b) would also serve to opt out of the default voting requirements under § 242(d). The 2026 amendments have made clear that a § 242(b) opt-out will not serve as a § 242(d) opt-out unless the certificate of incorporation (i) expressly states that the corporation is not governed by subparagraph (1) or (2) (or both) of § 242(d), or (ii) "requires a greater or additional vote than is contemplated" by the opt-out provision contained in § 242(b).[9]

Simplifying the Approvals Needed to Revive a Nonstock Corporation

DGCL § 312 permits the revival of a certificate of incorporation when it "has become forfeited or void," which may happen, for example, when a corporation fails to pay its annual Delaware franchise tax.[10] Subsection (j) of § 312, which deals specifically with revival of a nonstock corporation's certificate of incorporation, has been amended to simplify language regarding the possible role of members of the corporation in the revival.

DGCL § 312(j) formerly provided that to revive the certificate of incorporation of a nonstock corporation, any acts that the board of directors of a stock corporation need to perform to revive its certificate must be performed by the nonstock corporation's governing body, and any acts that the stockholders of a stock corporation need to perform to revive its certificate must be performed by the members of the nonstock corporation "who are entitled to vote for the election of members of its governing body," plus "any other members entitled to vote for dissolution" under the nonstock corporation's certificate of incorporation or bylaws. The 2026 amendments have eliminated any need for action by "other members entitled to vote for dissolution" of a nonstock corporation.[11] Moreover, because (under § 312(h)) action by stockholders or members would be required only if there are no directors or governing-body members in office, amended § 312(j) recognizes the possibility that no action by the members of the nonstock corporation may be needed at all.

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1 Del. H.B. 353, 153d Gen. Assem. §§ 4-5 (2026).

2 8 *Del. C.* § 132(b)(1)c.

3 *Id.* § 275(h).

4 *Id.* § 275(i).

5 *Compare id. with* 8 *Del. C.* § 252(d) (merger with non-Delaware corporation), § 266(c)(6) (conversion), § 390(b)(5) (transfer, domestication, or continuance).

6 8 *Del. C.* § 242(b)(2).

7 *Id.*

8 84 Del. Laws ch. 98, § 7 (2023).

9 8 *Del. C.* § 242(d) (final paragraph).

10 *Id.* § 312(b).

11 *Id.* § 312(j).

The Delaware Statutory Trust Act Has Been Amended to Require Trustees to Correct Certificates of Division That Contain False Information, Among Other Changes

By Leah E. Burcat, Travis G. Maurer, Harrison W. Conaty, and Jennifer E. Reefe

Recent amendments to the Delaware Statutory Trust Act (the "**DSTA**") have added, among other things, a duty on the part of trustees of a Delaware statutory trust (a "**DST**") that has divided or resulted from a division, to amend the associated certificates of division to correct names and addresses that are or become inaccurate. All of the amendments discussed below took effect on August 1, 2026.[1]

Amendments to Certificates of Division

First adopted in 2020, § 3825 of the DSTA sets forth a procedure by which a DST may divide into multiple DSTs.[2] To effect a division, the DST must, among other requirements, file a certificate of division with the Delaware Secretary of State.[3] This certificate helps to protect creditors of the dividing DST by providing the name and address of a "division contact," from which, for six years following the division, a creditor can obtain the name and address of the DST to which the creditor's claim was assigned in the division. Similarly, the certificate of division helps to protect beneficial owners of the dividing DST by specifying the DST from which they can obtain a copy of the plan of division, and such DST's address.[4]

The 2026 amendments have added provisions to DSTA § 3825 that create a duty to "promptly" amend a certificate of division if the name or address of the division contact, or of the DST that will provide a copy of the plan of division, was not accurate at the time of filing or has since been made inaccurate by a change of circumstances.[5] The duty falls upon a trustee of the dividing DST where the dividing DST survived the division, and upon a trustee of any DST resulting from the division where the dividing DST did not survive the division or otherwise no longer exists as a DST. The duty arises when such trustee becomes aware of the inaccuracy, and the duty terminates on the sixth anniversary of the effective date of the division.

A certificate of division is amended by filing a certificate of amendment of certificate of division with the Secretary of State.[6] A separate certificate of amendment must be filed for each "division" DST, i.e., the dividing DST if it survived the division and any DST that resulted from the division. The certificate of amendment must set forth the name of the dividing DST; the dividing DST's original name, if different; the name of the DST "to which the amendment to the certificate of division relates"; and the amendment being made to the certificate of division.

Although a separate certificate of amendment of certificate of division must be filed for each division DST, all such certificates can be executed by the same person unless the plan of division or certificate of division provided otherwise, and each division DST is deemed to consent to such execution. If the dividing DST survived the division, then each certificate is executed by at least one trustee of that DST "acting on behalf of the division [DST] to which the [certificate] relates." If the dividing DST did not survive or otherwise no longer exists as a DST, then each certificate is executed by an authorized person on behalf of the resulting DST again acting on behalf of the division DST to which the certificate relates.[7]

The Delaware Secretary of State will normally reject filings that are attempted with respect to entities that are not in good standing. However, in the case of a certificate of amendment of certificate of division, the Secretary of State will

accept the certificate for filing for each of the division DSTs as long as at least one of them is in good standing.[8]

Nullifying Previous Filings

The amendments confirm that certificates of correction can be used not just to correct but, alternatively, to nullify instruments that have been filed with the Secretary of State. When a certificate of correction is used for nullification, it must state "the inaccuracy or defect" that prompted the filing and "provide for the nullification of the [prior] certificate."[9] As explained in the legislative synopsis that accompanied the amendments, the language providing for the nullification will be "sufficient if it states that the previously filed certificate is nullified or void or uses words of similar meaning."[10]

In addition, a conforming change has been made to the DSTA provision regarding certificates of cancellation, indicating that a certificate of correction can be used to nullify an erroneously executed certificate of cancellation.[11]

Revoking Dissolution of a DST Series

The DSTA permits the establishment of series of assets, beneficial interests, trustees, and beneficial owners of a DST. Before the 2026 amendments, the DSTA provided for the dissolution of such series but did not address whether or how a series dissolution could be revoked. Subsections providing for the revocation of series dissolution have now been added.

The amendments set forth alternative revocation methods whose availability depends in part on how dissolution was effected. First, if the series was dissolved pursuant to approval by the beneficial owners associated with it (or by other persons whose approval was required by the DST's governing instrument), then its dissolution may be revoked by such approval.[12]

Second, if dissolution resulted from the expiration of a time period or the occurrence of an event as set forth in the governing instrument, the dissolution can be revoked by the approval that is required to amend the provision in the governing instrument that caused the dissolution, approval by any beneficial owners associated with the series, and approval by other persons whose approval was required by the DST's governing instrument.[13] Note, however, that this alternative does not apply if the "event" causing dissolution was approval by beneficial owners associated with the series (and by other persons whose approval was required), which is covered by the first alternative above. This and the preceding revocation alternative are available only if the DST itself is not in dissolution, the DST's governing instrument does not prohibit the revocation, and the series has not completed its winding up.[14]

Third, if dissolution of a series resulted from dissolution of the DST itself, the dissolution of the series will automatically be revoked upon a revocation of the DST's dissolution, unless the governing instrument prohibits revocation of series dissolution, or, before revocation of the DST's dissolution, the winding up of the series was completed.[15]

The amendments confirm that the governing instrument may specify the manner in which dissolution of a series may be revoked or prohibit such revocation altogether.[16]

Ratification of Void or Voidable Acts

In 2022, the DSTA was amended to provide that a void or voidable act or transaction regarding a DST could subsequently be ratified by the DST's beneficial owners, its trustees, or other persons whose approval would be needed for validly engaging in the act or transaction or for amending the governing instrument to permit the act or transaction.[17] The 2026 amendments have increased the availability of ratification in several respects.[18]

First, language has been added to make clear that statutory ratification need not be done by a

formal action. Rather, ratification may be implied, "including by the statements, action, inaction, or acquiescence of or by" the beneficial owners, trustees, or other persons whose approval would otherwise be required.

Second, the amendments provide that the acts or transactions capable of statutory ratification include any act or transaction regarding the DST by any beneficial owner, trustee, or other person, in each case whether acting in an "individual capacity or on behalf of the [DST]."

Third, a new clause provides that in situations where notice of ratification must be given to beneficial owners, trustees, or other persons, "the giving of the notice is not a condition to the effectiveness" of the ratification.

Changes to Provisions on Control Beneficial Interests

Amendments made in 2022 added to the DSTA a subchapter ("**Subchapter III**") that limits the voting of "control beneficial interests" in certain DSTs registered or regulated under the Investment Company Act of 1940 (the "**1940 Act**").[19] To be subject to the Subchapter III limitations, a DST must (a) have a class of equity securities "listed on a national securities exchange registered under the Securities Exchange Act of 1934" or designated for trading on NASDAQ, and (b) be either (i) "registered under the 1940 Act as a closed-end management investment company" or (ii) "a closed-end management investment company that has elected to be regulated as a business development company under the 1940 Act."[20]

"Control beneficial interests" are defined in terms of a schedule of six voting-power thresholds, which are graduated from 10% up to any amount greater than 50%.[21] In essence, when the voting power associated with a person's holdings of beneficial interests crosses one of those thresholds, that person may vote the beneficial interests exceeding the threshold only if and to the extent that the disinterested beneficial owners have approved the voting of those interests by a two-thirds vote, or the DST's trustees or governing instrument has approved or exempted the acquisition of those interests.[22] An approval or exemption by the trustees or in the governing instrument may be made "specifically, generally, or generally by types, as to specifically identified or unidentified existing or future beneficial owners or their affiliates or associates, or as to any series or classes of beneficial interests[.]"[23] Under the 2026 amendments, the effects of the approval or exemption now reach "all of the beneficial interests acquired at any time within the range of voting power to which such approval or exemption applied."[24] Moreover, the approval or exemption of an acquisition may now be given or made "before, at the time of, or after the acquisition."[25]

The 2026 amendments have expanded the power of a DST governed by Subchapter III to compel disclosures by beneficial owners. Previously, the DST's trustees could require beneficial owners to disclose any information that the trustees reasonably believed was necessary or desirable to determine "whether a control beneficial interest acquisition has occurred." Following the amendments, the trustees may also seek information to determine "[w]hether any beneficial interests are control beneficial interests," and "[w]hether and how many beneficial interests may have been voted in violation of [Subchapter III]."[26] In addition, the DST may adopt procedures that are reasonably necessary or desirable for making those determinations. The procedures may include presumptions about how a beneficial owner, or its associates, vote their beneficial interests. The beneficial owner may present evidence to rebut such presumptions, within five days after the vote on a matter or such longer period as the trustees may allow.[27] Any such procedures and presumptions must be described in the DST's proxy materials.[28]

The 2026 amendments have also made changes to some of the Subchapter III definitions. An

"associate" of a person now includes any "separate account managed or advised by the person specified or any investment fund or other collective investment vehicle that has the same investment adviser as the person specified."[29] Changes to the definition of "control beneficial interest acquisition" make clear that the term includes beneficial interests that, "upon such acquisition," are control beneficial interests.[30] And the definition of "control beneficial interests" has been amended to clarify and confirm what beneficial interests it covers. First, the term includes beneficial interests that, at the time of their acquisition, did not exceed one of the voting-power thresholds, if they subsequently exceed one of the thresholds as a result of a reduction in the total number of outstanding beneficial interests, in which case the term is applied to beneficial interests in the reverse of the order in which they were acquired.[31] Second, the term does not apply to any beneficial interests "in the range of voting power below 10% of all voting power," except that interests that are control beneficial interests will not cease to be such if subsequent issuances of beneficial interests cause their voting power to fall below the 10% threshold.[32]

Other Changes

The 2026 amendments have added a new subsection to DSTA § 3802 to specify means by which a subscription for beneficial interests in a DST may be made irrevocable. Under § 3802(d), a subscription for beneficial interests, "whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law," shall be irrevocable "if the subscription states that it is irrevocable to the extent provided by the terms of the subscription."[33]

The amendments have expanded the persons entitled to the DSTA's default protection from liability. DSTA § 3803(c) provides that, unless the governing instrument provides otherwise, certain persons "shall not be personally liable to any person other than the statutory trust or a trustee or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof." This protection previously applied to an officer, employee, manager, and person to which authority has been delegated under DSTA § 3806(b)(7) or (i), in each case "when acting in such capacity." The amendments have added to this list an "adviser (as defined in § 3313 of [Title 12]."[34] Under § 3313, an adviser is a person "given authority by the terms of a governing instrument to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, distribution decisions or other decision of the fiduciary."[35]

The 2026 amendments make explicit that a DST's Delaware registered agent "may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both."[36] The amendment defines "virtual office" as acting "solely through the internet or solely through other means of remote communication."

The DSTA permits a DST to amend its certificate of trust by means of a certificate of merger where the DST is the surviving entity following the merger.[37] Previously, however, only three kinds of changes could be made in this way: changes to the entity's name, its registered office, or its registered agent. The 2026 amendments have removed those limitations. A certificate of merger may now amend the certificate of trust in any respect.[38]

Finally, if a DST is consolidating rather than merging with other entities, and the resulting entity is a DST, the DSTA now requires that the certificate of consolidation filed with the Secretary of State include, as an attachment, the certificate of trust of the resulting DST.[39]

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1 Del. H.B. 298 § 25, 153d Gen. Assem. (2026).

2 82 Del. Laws ch. 264, § 16 (2020).

3 12 *Del. C.* § 3825(h).

[4] *Id.* § 3825(g)(3), (h)(1).
[5] *Id.* § 3825(h)(3).
[6] *Id.* § 3825(h)(2).
[7] *Id.* § 3825(h)(4).
[8] *Id.* § 3825(h)(6).
[9] *Id.* § 3810(e).
[10] Del. H.B. 298 syn. § 10, 153d Gen. Assem. (2026).
[11] 12 *Del. C.* § 3810(d) (last paragraph).
[12] *Id.* § 3808(f)(1).
[13] *Id.* § 3808(f)(2).
[14] *Id.* § 3808(f).
[15] *Id.* § 3808(f) (last paragraph).
[16] *Id.* § 3808(f).
[17] 83 Del. Laws ch. 381, § 7 (2022).
[18] 12 *Del. C.* § 3806(o).
[19] 83 Del. Laws ch. 381, § 19 (2022) (adding DSTA §§ 3881-3888).
[20] 12 *Del. C.* § 3883(c).
[21] *Id.* § 3881(e).
[22] *Id.* § 3883.
[23] *Id.* § 3883(b).
[24] *Id.* § 3882(1).
[25] *Id.* § 3883(b).
[26] *Id.* § 3888(b).
[27] *Id.* § 3888(d).
[28] *Id.* § 3888(d)(2).
[29] *Id.* § 3881(c)(4)a.
[30] *Id.* § 3881(d)(1).
[31] *Id.* § 3881(e)(2)b.
[32] *Id.* § 3881(e)(2)a., c.
[33] *Id.* § 3802(d).
[34] *Id.* § 3803(c).
[35] *Id.* § 3313(a).
[36] *Id.* § 3807(i)(2).
[37] *Id.* § 3815(b)(4).
[38] *Id.*
[39] *Id.* § 3815(b)(5).

Delaware Adopts the Uniform Assignment for Benefit of Creditors Act, with Several Important Modifications

By John J. Paschetto and Amber J. Zelko

Effective June 10, 2026, Delaware adopted the Uniform Assignment for Benefit of Creditors Act, which was promulgated by the Uniform Law Commission (the "**ULC**") on October 20, 2025. An assignment for the benefit of creditors (an "**ABC**") is a "liquidation procedure" in which a debtor "voluntarily assigns all of its assets to an 'assignee,' a fiduciary, which liquidates the assets and distributes the proceeds to the [assigning debtor's] creditors."[1] The ULC drafted the uniform ABC act (the "**Uniform Act**") in part because there has been "increasing interest" in ABCs as an alternative to bankruptcy, and because wide variation has developed in state laws governing ABCs.[2]

Delaware's uniform ABC act (the "**Delaware Act**") is found in the Delaware Code at §§ 7301A-7324A of Title 10. The Delaware Act's changes to the Uniform Act are few in number, but several of them should be noted by practitioners considering whether to use the ABC procedure. They include the addition of a requirement that the assignee file a petition with the Delaware Court of Chancery within 14 days after entering into the assignment agreement,[3] and a requirement that employees of the assigning debtor (or "assignor") be given notice of the assignment.[4] Moreover, Delaware did not adopt the official comments to the Uniform Act. Those comments may nevertheless "be deemed to be persuasive authority in interpreting" the Delaware Act, subject to a slight change to the wording of one comment.[5]

The Delaware Act replaces the state's former ABC regime, at §§ 7381-7387 of Title 10, which was first adopted in 1875.[6] Among the key dif-

ferences between the former regime and the Delaware Act are (i) the assignee is no longer statutorily required to file an inventory and affidavit with the Register in Chancery,[7] (ii) the Court of Chancery is not required to appoint persons to appraise the assignor's estate, and (iii) the assignee is not required to give a bond.[8] In addition, the Delaware Act addresses gaps in the former regime and provides greater certainty regarding the duties of assignors, assignees, and creditors.

Main Uniform Features of the Delaware Act

As under prior law, the ABC procedure can be elected only by the assigning debtor (the assignor).[9] An ABC commences when the assignor enters into an assignment agreement with an assignee.[10] The assignment agreement must transfer, or provide for the transfer of, all of the assignor's assets to the assignee, causing the assignee to hold the assignment estate.[11] As defined in the Delaware Act, however, "assets" do not include any interest in property that is subject to an enforceable transfer restriction unless any required consent to the transfer has been obtained.[12] In addition, the assignor and assignee must comply with any applicable laws regarding transfer of the assets, such as real-estate and certificate-of-title laws.[13]

The assignee is automatically a lien creditor as defined in UCC Article 9.[14] With respect to estate assets that are personal property or fixtures, the assignee's lien is automatically perfected as of the ABC's effective date and therefore has priority over creditor interests that are not perfected before the ABC.[15] However, as under prior law and unlike in bankruptcy, an ABC does not stay proceedings by creditors.[16]

The assignee "has a fiduciary duty to the assignment estate,"[17] but the assignee will be protected in its good-faith reliance on records of the assignor, information provided by representatives of the assignor, and reports by persons selected by the assignee with reasonable care.[18] The assignee also has various specific duties, which include setting a claims bar date (which cannot be less than 90 days after the ABC's effective date), making reports to known creditors, and taking reasonable steps to find creditors not listed by the assignor.[19]

Unless the assignment agreement provides otherwise, the assignee will have the power to avoid fraudulent transfers made by the assignor if the transfers could have been avoided by a creditor that filed a claim in the ABC.[20] A creditor's right to bring an avoidance action against the assignor is deemed to be assigned exclusively to the assignee when the creditor submits a proof of claim.[21] This assignment of the creditor's right of avoidance resolves the uncertainty whether an assignee in an ABC has standing to challenge a fraudulent transfer by the assignor. It follows that in an avoidance action, the assignee may not recover more in value than the creditor could have obtained[22]—a rule different from that under bankruptcy law, which permits a trustee to recover the entire value of the avoided transfer.[23]

The assignee must send to known creditors and certain other persons a notice of the ABC that includes the claims bar date and instructions for submitting proofs of claim.[24] The notice must be sent within a reasonable time after the ABC's effective date. What constitutes a reasonable time will depend on the circumstances, but in no event can it exceed 30 days.[25] After the claims bar date, the assignee must prepare a list of creditors that submitted proofs of claims, with the amounts of their claims (if known) and whether their claims are secured.[26] This list (redacted as appropriate to protect claimants' privacy) must be sent to any person with an interest in the assignment estate that requests it.[27]

The assignee may dispute a claim by sending notice of the nature of the dispute to the creditor.[28] The Delaware Court of Chancery has nonexclusive jurisdiction to hear a dispute on a claim.[29] A proceeding challenging a claim must

be commenced before the final distribution of the assignment estate. Otherwise, the assignee must allow the claim.[30] The assignee must "create a dollar-for-dollar reserve for the estimated amount" of any disputed claim.[31]

The Delaware Act specifies the order in which allowed claims must be paid out of the assignment estate.[32] First in line are those of claimants with perfected liens senior to the assignee's lien. Second are the "necessary costs" of administering the assignment estate, including the fees of the assignee and professionals engaged by the assignee. Third are claims "entitled to priority under federal law," including claims of the U.S. government coming within 31 U.S.C. § 3713. Fourth are wages entitled to priority under other law. Fifth are unsecured claims. Sixth are claims submitted after the bar date. The distribution of any remaining assets should be provided for in the assignment agreement, because the Delaware Act does not by default require that such assets go to the assignor or any other person.[33] When the assignee transfers an estate asset, the transferee obtains for value all of the assignee's rights in the asset, and any lien subordinate to the assignee's lien is discharged.[34]

Following completion of the final distribution, the assignee must send a final accounting to any creditor with an allowed claim that was not satisfied in full.[35] The assignee is discharged when the final accounting is sent and any other duties under the Delaware Act have been fulfilled.[36] As under prior law, the ABC process does not give the assignor a "fresh start" by means of a discharge or enable the assignor to reorganize, unlike the relief available in bankruptcy.

Non-Uniform Provisions in the Delaware Act

As mentioned above, Delaware has made some noteworthy changes to the Uniform Act. First, the Delaware Act makes court involvement in an ABC mandatory rather than optional, by requiring the assignee to file a petition with the Court of Chancery within fourteen days after the execution of the assignment agreement; thereafter, however, court involvement is minimal.[37] Second, the Delaware Act requires that notice of the ABC be given not only to known creditors but also to contract counterparties and to "individuals employed by the assignor within 90 days of the assignment."[38]

Third, under the Delaware Act, the assignee must make interim reports to creditors at times set by the Court of Chancery, as opposed to every six months as under the Uniform Act.[39] Fourth, the Delaware Act provides for a rebuttable presumption that any required notice has been received if the notice was given in accordance with the Court of Chancery rules.[40] Fifth, the Delaware Act permits an assignee to seek from the Court of Chancery approval of the estimated amounts of disputed claims for which the assignee must create a reserve.[41]

Sixth, the Delaware Act expressly provides that banks and insurers may not be assignors.[42] And seventh, the Delaware Act permits the Court of Chancery, "on its own initiative or upon the request of a party in interest," to communicate directly with, and request information or assistance from, a court "before which an assignment proceeding has been commenced on behalf of an assignor that is an affiliate of an assignor" in a Delaware ABC.[43]

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1 Uniform Assignment for Benefit of Creditors Act, Prefatory Note (ULC 2025) [hereinafter Uniform Act].

2 *Id.*

3 10 *Del. C.* § 7321A(a)(1).

4 *Id.* § 7307A(a).

5 Del. S.B. 367 syn., 153d Gen. Assem. (2026). The legislative synopsis modified the official comment to § 2 of the Uniform Act (§ 7302A of the Delaware Act) to reflect

the Delaware Act's permission of waiver of transfer restrictions by "any person whose consent is required" rather than by a "counterparty" only.

6 15 Del. Laws ch. 187 (1875). Former §§ 7381-7387 of Title 10 will continue to govern ABCs commenced before June 10, 2026. Del. S.B. 367 syn., 153d Gen. Assem. § 9 (2026).

7 Although the Delaware Act no longer imposes a statutory affidavit requirement, the Court of Chancery has, in recent ABC proceedings under the new statutory framework, requested affidavits addressing the background of the assignment, including, among other things, the assignor's indebtedness, the events preceding the assignment, any sale efforts, the assignee's engagement and compensation arrangements, and any required consents. *See, e.g., In re Areteia Therapeutics, Inc*., C.A. No. 2026-0847-TJF (Del. Ch. June 30, 2026). The court has excused such a submission where the petition itself provides the relevant information.

8 *See* 10 *Del. C*. § 7381 (filing of inventory and affidavit), § 7382 (appointment of appraisers), § 7383 (posting of bond) (2025).

9 10 *Del. C.* § 7302A(8); *cf.* Uniform Act § 5 cmt. ("This act does not require that a creditor consent to an assignment.").

10 10 *Del. C.* §§ 7302A(6), 7305A.

11 *Id.* §§ 7302A(7), 7304A(c).

12 *Id.* § 7302A(2).

13 *Id.* § 7306A(h); Uniform Act § 6 cmt.

14 10 *Del. C.* § 7310A(d).

15 Uniform Act § 10 cmt.

16 *See* Uniform Act § 18 cmt. ("This act does not displace other legal or equitable remedies available under other law.").

17 10 *Del. C.* § 7309A(a).

18 *Id.* § 7317A(f).

19 *Id.* § 7309A(b); Uniform Act § 9 cmt.

20 10 *Del. C.* § 7310(b)(12).

21 *Id.* § 7313A(c)(2).

22 *Id.* § 7310A(c).

23 11 U.S.C. § 550.

24 10 *Del. C.* § 7307A(a)-(b).

25 *Id.* § 7307A(a); Uniform Act § 7 cmt. (providing example of when reasonableness would require notice earlier than 30 days after the ABC's effective date).

26 10 *Del. C.* § 7311A(e).

27 *Id.* § 7311A(g); Uniform Act § 11 cmt.

28 10 *Del. C.* § 7312A(a).

29 *Id.* §§ 7312A(b), 7321A. By submitting a claim, a creditor consents to the jurisdiction of the Court of Chancery. *Id.* § 7313A(c).

30 *Id.* § 7312A(b).

31 *Id.* § 7312A(c).

32 *Id.* § 7315A.

33 Uniform Act § 15 cmt.

34 10 *Del. C.* § 7314A(a).

35 *Id.* § 7319A(a).

36 *Id.* § 7319A(b).

37 *Id.* § 7321A.

38 *Id.* § 7307A(a).

39 *Id.* § 7309A(b)(8).

40 *Id.* § 7321A(e).

41 *Id.* § 7312A(c).

42 *Id.* § 7303A(b).

43 *Id.* § 7320A(e).

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