

TMA NYC WEBINAR

The Road Not Filed: Options Outside Chapter 11

Tuesday, September 15, 2026
12:00 - 1:15 PM ET

Chapter 11 Isn't the Only Path Forward

Why Companies Are Using Non-Bankruptcy Alternatives

Cost



- Smaller Chapter 11 cases can cost at least \$1.5-\$2.0 million.
- An ABC can range from approximately \$300,000 to \$1.5 million for a more complex process.

Efficiency



- Chapter 11 can be time-consuming.
- Certain industries are not eligible.

Reputational Considerations



- Bankruptcy may cause damage due to perceptions of financial distress and business instability
- Alternatives can offer less negative publicity and reduced reputational stigma.

Areas of Risk



- No automatic stay; potential for involuntary bankruptcy/litigation.
- Increased risk of holdouts
- Generally, no releases.
- No order stating sold assets are free and clear.
- Transaction pricing reflects risk profile.

Change of Control Transactions Outside of Chapter 11

Transaction Structures

Out of Court

Equity or Asset Sale

Negotiated and executed outside of a bankruptcy process.



Key Features – Equity or Asset Sale

- Structure can provide flexibility to sell equity or selected assets.
- Asset transfers may require contractual, lender or regulatory consents; equity sales may trigger change-of-control provisions.
- Unlike a Chapter 11 sale, liens and claims must be addressed without a bankruptcy court “free and clear” sale order.

Article 9

Article 9 Foreclosure

Enforcement of a secured lender’s rights under Article 9 following a default. May be implemented through strict foreclosure, a public auction or a private sale.



Key Features – Article 9

- Can provide a faster and less costly alternative to a more formal restructuring process.
- Typically involves fewer constituencies than a Chapter 11 process.

Strict Foreclosure

- Lender takes collateral in satisfaction of debt.
- Requires debtor consent / no objection.

Public Auction / Private Sale

- Collateral sold through a public or private process.
- Notice requirements apply.
- Sale must be commercially reasonable.

Strategic Considerations:

Preserving Operations, Sale-process coordination and effective noticing to potentially interested parties

Winding Up/Liquidation Alternatives

Options	Structure	Benefits	Key Considerations
ABC	- State-law process; court involvement varies by jurisdiction - Debtor/Lender select assignee. - Assignee operates within a limited budget. - Secured creditor consent required.	- Streamlined process. - Fewer constituencies. - Orderly claims resolution. - Less stigma/limited public disclosure.	- No automatic stay. - Potential involuntary bankruptcy/litigation. - No override of contractual consent/termination provisions. - No cap on landlord or wage claims.
Receivership	- Creditor initiated. - Federal or state. - Third-party receiver administers assets. - Court order defines receiver's powers. - Regular reporting is required.	- Speed, especially for specific assets. - Can be tailored to underlying issues. - Less publicity than Chapter 11. - Receiver may be given broad powers.	- No automatic stay. - Potential involuntary bankruptcy or litigation. - No override of consent or termination process. - Fees may be higher. - Court experience and sophistication may vary.
State-Law Dissolution	- Management-controlled or independent fiduciary. - Follow applicable state-law procedures. - Can be used with an asset sale. - Board and shareholder approval required.	- Greater control over wind-down. - Can be coordinated with other asset-transfer mechanisms. - Potential state-law protections when procedures are properly followed.	- No automatic stay. - Company is no longer operating as a normal business - Formal approvals are required. - Claims must be adequately reserved for.



Key Trends – Movement Towards Non-Bankruptcy Solutions

Control Allows for control over the process via selection of the Fiduciary.	Cost Significantly lower cost compared to in court bankruptcy solutions.	Reputational Protection Lack of publicity through public in court process grants greater reputational protection.
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Key Differences Among Restructuring Options

Features	Foreclosure	ABC	Receivership	Chapter 11
Debtor Cooperation & Consent	For strict foreclosure, yes, but not necessarily for public or private dispositions	Yes	No	Yes, for voluntary
Control	Secured party	Assignee – often selected in consultation with secured party and debtor	Receiver – may be selected by secured party	Debtor in Possession, unless trustee is appointed for cause
Override of Contract Termination Clauses	No	No	No	Yes, generally
Override of Anti-Assignment Provisions	No	No	No	Yes, generally
Automatic Stay	No	No	No, generally	Yes, generally
Cut Off Successor Liability	No	No	No	Yes, generally

Panelists



Member, Cole Schotz P.C.



**Partner, Goodwin Procter
LLP**



**Managing Partner, Apotheo
Capital**



**Executive Director - IP
Services, Hilco Global**



Director, Teneo