

Comparison of Bankruptcy & Alternatives

	OUT OF COURT	UCC ARTICLE 9	ASSIGNMENT for the BENEFIT of CREDITORS (ABC)	STATE COURT RECEIVERSHIP	FEDERAL COURT RECEIVERSHIP	CHAPTER 11 BANKRUPTCY	CHAPTER 7 BANKRUPTCY
VENUE	Out of Court	Out of Court	Out of Court or in State Court depending on the state	State Court	Federal Court	U.S. Bankruptcy Court, a Federal Court	U.S. Bankruptcy Court, a Federal Court
PURPOSE	Company sale of equity or assets, or liquidation by Company	Sale of collateral (Company assets or equity) by Secured Lender	Sale or liquidation of Company assets by Assignee	Sale or liquidation of Company assets by Receiver or Receiver act as custodian of assets pending certain event	Sale or liquidation of Company assets by Receiver or Receiver act as custodian of assets pending certain event	Plan of Reorganization, or sale or liquidation of assets by Company as Debtor In Possession	Liquidation of assets by Chapter 7 Trustee
PARTIES INVOLVED	Company and buyer; potentially creditors	Secured Lender, Company, buyer, and junior lien holders; potentially creditors	Assignee and buyer; potentially creditors	Parties to the lawsuit requesting appointment of a Receiver or in some cases all stakeholders of Company	Parties to the lawsuit requesting appointment of a Receiver or in some cases all stakeholders of Company	All stakeholders of Company	All stakeholders of Company and Chapter 7 Trustee
VOLUNTARY or INVOLUNTARY	Voluntary	Voluntary or involuntary	Voluntary	Voluntary or involuntary; can be contractually agreed remedy	Voluntary or involuntary; can be contractually agreed remedy	Voluntary or involuntary	Voluntary or involuntary
LEGAL AUTHORITY	Statutory and corporate authority	Article 9 of the UCC under applicable State law	State statute or common law	State statute or common law	Federal statute or common law or potentially State law where Federal Court resides	Bankruptcy Code	Bankruptcy Code
JURISDICTION	Not Applicable	May be limited to applicable State law.	If State Court proceeding, orders and powers may be limited to enforcement within State unless other States recognize orders	Orders and powers may be limited to enforcement within State unless other States recognize orders	If diversity of citizenship of Plaintiff and Defendants or Federal question, then national jurisdiction	National jurisdiction	National jurisdiction
LAW WELL DEVELOPED	Well developed	Well developed	Well developed in States where ABCs are commonly used and less developed or not developed in other States	Well developed where State Court Receivers are commonly used or statute updated, less developed or not developed in other States	Limited Federal statute with developing Federal common law. If State law where Federal Court resides applies, depends on State law	Well developed	Well developed

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JUDICIAL OVERSIGHT	None	None	No judicial oversight unless required by State ABC statute, then State Court oversight	State Court	Federal Court	U.S. Bankruptcy Court, a Federal Court	U.S. Bankruptcy Court, a Federal Court
ADMINISTRATIVE OVERSIGHT	None	None	None	None	None	U.S. Trustee's office	U.S. Trustee's office
FINANCING OF CASE	Secured Lender	Secured Lender	Secured Lender subject to agreement with Assignee	Secured Lender subject to agreement with Receiver	Secured Lender subject to agreement with Receiver	Secured Lender subject to agreement with Company (DIP loan) or Cash Collateral (could either be agreed or non-consensual)	Secured Lender subject to agreement with Chapter 7 Trustee
MANAGEMENT or CUSTODIAN IN CONTROL of COMPANY and ASSETS	Company remains in control	Company remains in control until Secured Lender forecloses but Secured Lender manages asset sale process	Assignee	Receiver	Receiver	Company or, in rare circumstances, Chapter 11 Trustee if ordered by the Bankruptcy Court	Chapter 7 Trustee
SELECTION of MANAGEMENT or CUSTODIAN	N/A	N/A	Company selected	Court appointed with parties' preferences usually honored	Court appointed with parties' preferences usually honored	Company remains in control unless, in rare circumstances, Chapter 11 Trustee is ordered and appointed by Bankruptcy Court. Chapter 11 Trustee selected by U.S. Trustee or elected by creditors (rare)	U.S. Trustee appointed Chapter 7 Panel Trustee unless creditors elect a different Trustee (rare)
CONTINUOUS BUSINESS OPERATIONS	Yes	Yes unless voluntary foreclosure, then likely disruption of business operations	Yes	Yes	Yes	Yes	No
PROFESSIONAL REQUIREMENTS	None other than generally applicable rules of professional responsibility	None other than generally applicable rules of professional responsibility	Professionals must be free of conflicts. Note- it's difficult to first represent Company or Secured Lender in a case and then become the Assignee	Professionals must be free of conflicts. Note- it's difficult to first represent Company or Secured Lender in a case and then become the Receiver	Professionals must be free of conflicts. Note- it's difficult to first represent company or Secured Lender in a case and then become the Receiver	Professionals must be free of conflicts and be disinterested	Professionals must be free of conflicts and be disinterested

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AUTOMATIC STAY of LITIGATION	None	None	In a few States, limited statutory stay applicable within that State jurisdiction only	In a few States, limited statutory stay applicable within that State jurisdiction only. Other States allow limited stay under "custodial legis"-prevents creditors from establishing lien in property possessed by Receiver	Limited stay under "custodial legis"-prevents creditor from establishing lien in property possessed by Receiver	Broad stay	Broad stay
ASSIGNMENT of EXECUTORY CONTRACTS	Only have contractual rights	Only have contractual rights	Only have contractual rights	Only have contractual rights	Only have contractual rights	May assume and assign most contracts by curing monetary defaults and providing adequate assurance of ability to financially perform	May assume and assign most contracts by curing monetary defaults and providing adequate assurance of ability to financially perform
SALES of ASSETS FREE and CLEAR of LIENS and ENCUMBERANCES	No	No	In a few States, ABC statute authorizes sales free and clear.	In a few States, Receivership statute authorizes sales free and clear. Other State Courts may approve sales free and clear.	No Federal statute authority but Court may approve a sale free and clear.	Yes	Yes
SUCCESSOR LIABILITY EXPOSURE for BUYER	Yes	Yes	Limited exposure in Court supervised ABC depending on language in Sale Order; varies by State. Yes in non- Court supervised ABC	Limited exposure depending on State statute and language used in the Sale Order; varies by State	Limited successor liability exposure depending on language used in the Sale Order	No successor liability exposure except in isolated situations	No successor liability exposure except in isolated situations
ABILITY to BRING PREFERENCE LAWSUITS	No	No	In a few states, remedy available to Assignee	In a few States, remedy available to Receiver	Not available under Federal Receivership law.	Remedy Available to Company or Chapter 11 Trustee (rare)	Remedy available to Chapter 7 Trustee
ABILITY to BRING FRAUDULENT CONVEYANCE LAWSUITS	Remedy available to creditors directly	Remedy available to creditors directly	In some States, remedy available to Assignee	In most states, remedy available to Receiver	Remedy available to Receiver	Remedy available to Company or Chapter 11 Trustee (rare)	Remedy available to Chapter 7 Trustee
DEBTOR DISCHARGE of DEBTS	No	No	No	No	No	Upon confirmation of a Plan of Reorganization, yes	Limited to individual debtors

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TIME FRAME for SALE of COMPANY	Likely most expeditious if buyer consents to process	Very expeditious if buyer consents to process	Expeditious but ABC sales in States requiring Court oversight are typically slower	Expeditious but Court oversight means Court approval is required	Expeditious but Court oversight means Court approval is required	Slower as Courts allow Unsecured Creditors Committee formation which slows down the process. Sales as fast as 30 days possible	Generally slowest
DISTRIBUTION of ASSETS	Company receives funds, pays secured debt and then unsecured debt	After Secured Lender paid in full, excess proceeds, if any, returned to Company	Statutory priorities may be specified in state statute, common law, or if applicable, Court Order	Statutory priorities may be specified in state statute, Court Order, or common law.	Pursuant to Court Order or common law	Bankruptcy Code and pursuant to a Plan of Reorganization	Bankruptcy Code
SCALABLE to SIZE and COMPLEXITY of the CASE	Yes flexible	Yes flexible	Yes flexible	Yes flexible	Yes flexible	Minimal ability to adjust process to size and complexity of case	Minimal ability to adjust process to size and complexity of case
PUBLICITY of the COMPANY'S FINANCIAL DISTRESS	None	Minimal	Minimal	Moderate	Moderate	Significant and ongoing	Significant but one time event
COST of the PROCESS	Lowest cost	Lowest cost	Low Cost	Moderate Cost	Moderate Cost	Most expensive	Expensive
VALUE EXPECTATION for a COMPANY SALE	Highest net of costs in most cases	Limited as value will be discounted due to successor liability risk and likely disruption of business operations	Moderate depending on ability to sell free and clear and continue business operations	Moderate depending on ability to sell free and clear and continue business operations	Moderate depending on ability to sell free and clear and continue business operations	High due to statutory ability to sell free and clear and assign contracts, but Chapter 11 process may damage value of the going concern business and certain types of intangible assets	Lowest due to cessation of business operations, Chapter 7 Trustee may not be expert at maximizing value, and the time required to sell assets may be longer