

SELECT THE RIGHT PROCESS FOR YOUR BUSINESS WHEN BUYING ASSETS

Buying assets of a distressed company presents unique challenges and opportunities, which can vary depending on whether the transaction is in or out of court.

Which alternative is best will depend on, among other factors, those set forth on the chart below, the cooperativeness of the company, the location of the assets, the valuation of secured claims, whether the buyer is an insider, environmental issues, nature of litigation claims and employee issues (WARN, union and pension).

The following chart outlines some of the differences in the types of distressed company sales:

	NO PROCESS	FRIENDLY ARTICLE 9	ASSIGNMENT FOR BENEFIT OF CREDITORS	RECEIVERSHIP	CHAPTER 11 BANKRUPTCY
Seller	company	lender	assignee	receiver	company or trustee
Required Notice	none	lien holders, company and guarantors	depends on state, usually all creditors	depends on court requirements	all creditors
Length of Notice Period	none	10-20 days	20-30 days	20-30 days	45-60 days
Auction	none	not required, sale only needs to be "commercially reasonable"	yes	depends	yes
Court Approval	none	none	depends on state	yes	yes
Free and Clear of all Liens	no	no	no	no	yes
Ability to Assign Contracts Without Consent of Counterparty	no	no	no	no	yes
Availability of Termination Fee/ Break-up Fee/ Expense Reimbursement	yes, but usually not	none	yes	depends	yes
Good Faith Deposit	no	no	usually	usually	usually
Reps and Warranties	yes, but less than "healthy company" sale	limited	limited	limited	yes, but less than "healthy company" sale

HAROLD D. ISRAEL

o 312.476.7573 | c 312.848.7764 | hisrael@llegal.com
2 N. LaSalle St. Suite 1300 | Chicago, Illinois 60602



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	NO PROCESS	FRIENDLY ARTICLE 9	ASSIGNMENT FOR BENEFIT OF CREDITORS	RECEIVERSHIP	CHAPTER 11 BANKRUPTCY
Automatic Stay	no	no	no	no	yes
Risk of Involuntary Bankruptcy	yes	yes	yes	yes	no
Risk of Successor Liability	higher	higher	lower	lower	very low
Cost of Process	low	low	medium	medium	high
Fraudulent Transfer Risk	higher	higher	lower	lower	very low
Indemnification	limited	none	none	none	none
Holdback	possible	none	none	none	none

LP's Banking and Restructuring Group can help select the right process for you, whether you are buying or selling assets.

This document has been prepared by Levenfeld Pearlstein, LLC for informational purposes only and is not intended to, nor shall it be considered legal advice. If you have any questions, you should address the specific matter with your attorney.