

# American College of Bankruptcy San Antonio, Texas

## Alternatives to Bankruptcy March 21, 2026

### **Moderator:**

- Patricia A. Alhadeff & Sitterson, P.A., Miami, Florida

### **Speakers:**

- Honorable Corali Lopez-Castro, U.S. Bankruptcy Court for the Southern District of Florida
- Margaret R. Westbrook, K&L Gates, Raleigh, North Carolina
- Ryan T. Murphy, Fredrikson & Byron, P.A., Minneapolis, Minnesota
- Edwin E. Smith, Morgan Lewis & Bockius LLP, Boston, Massachusetts

# Commencement of the Process

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Voluntary petition by debtor or involuntary petition by creditors filed in federal bankruptcy court	Initiated by secured creditor(s), regulator, or occasionally debtor via state or federal court action; limited number of states allow for voluntary receiverships	Voluntary transfer by debtor to assignee under state common law or statute; shareholder/member approval often required

# Supervision/Administration/Control

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Federal bankruptcy court supervises; trustee (Ch. 7) or debtor-in-possession (Ch. 11); U.S. Trustee oversight	Court-appointed receiver controls assets and operations subject to court orders; typically, two types limited (specific asset) or general (act as board/management )	Assignee administers estate; whether court process and level of supervision varies by jurisdiction; Uniform ABC Act (UABCA) no court supervision unless disputes arise. The UABCA does not preclude the assignee from seeking a confirmatory judicial sale order when required by a buyer or title company.

# Expertise of Those Involved

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Trustees and bankruptcy judges are specialists in insolvency; DIP management may lack restructuring expertise; Chapter 7 Trustee is unknown so often a drawback as compared to ABC	Receiver often chosen by secured creditor for industry or restructuring expertise; varies by jurisdiction	Assignee selected by Assignor, and often a professional fiduciary or turnaround firm; expertise varies widely

# Role of Creditors, Employees, Other Constituencies

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Formal participation: committees, voting, objections, priority scheme	Creditors have limited direct role; secured creditor influence often significant and may need to assure funding of process, at least from collateral	Creditors generally passive; limited rights to object depending on state law, which may include consent to use of collateral by a secured creditor

# Retention/Compensation of Professional

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Professionals retained with court approval; fees subject to detailed review and objection	Receiver hires professionals with court approval; fees reviewed but often less intensively	Assignee hires professionals without court approval; compensation governed by state law and assignment agreement; under UABCA compensation must be disclosed to creditors

# Stay of Collection/Foreclosure/Litigation

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Automatic stay applies immediately and broadly	Generally no automatic stay but does exist in limited number of states; court may issue injunctions on a case-by-case basis	Generally no automatic stay but does exist in limited number of states; creditors generally restrained only by assignee's possession of assets; under UABCA there is an automatic stay

## Avoidance Powers (Preferences, FT, Strong Arm)

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Full avoidance powers under Bankruptcy Code §§ 544–550, including Moore v. Bay	Limited; depends on court order and applicable state law	Generally limited to state fraudulent transfer law; no federal preference or strong-arm powers; under UABCA the assignee would have strong-arm powers and application of Moore v. Bay would be excluded for fraudulent transfers

## Treatment of Insider Transaction

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Heightened scrutiny; longer look-back periods; equitable subordination possible	Scrutiny possible but more limited and fact-specific; priority is usually maximizing value of secured creditor collateral; insider preference claims may be pursued under UFTA/UVTA Sec. 5(b)	Insider transactions reviewable under state law but generally weaker remedies and priority is usually maximizing value of secured creditor collateral; insider preference claims may be pursued under UFTA/UVTA Sec. 5(b)

# In Pari Delicto Defense and Third Party Recoveries

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Trustee often not barred due to Bankruptcy Code exceptions; mixed case law	Defense frequently asserted against receiver; outcomes vary by jurisdiction	Often bars assignee's claims as successor to debtor; fewer statutory overrides; UABCA does not address these issues

# Financing the Wind-Down/Restructuring

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
DIP financing and post-petition credit with superpriority available	Receiver financing possible but uncommon and heavily negotiated; usually from sale proceeds of collateral or protective advances from secured creditor	Typically funded from asset sales; little access to new money; secured creditor may consent to use of its cash collateral

# Assumption of Executory Contracts

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Explicit statutory right to assume/reject contracts and leases	Limited; depends on receiver's authority and contract law; under UCRERA receiver may perform contract but not assign it	Generally, no assumption power; contracts assigned only if assignable under state law

# Override of Anti-Assignment Clauses

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Yes, in many cases under § 365	Generally, no	Generally, no

# Reorganization/Preservation of Going Concern Value

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Chapter 11 designed for reorganization and going-concern sales	Possible but less common; usually liquidation-focused	Primarily liquidation-oriented, though going-concern sales occur

## Sale of Assets Free and Clear

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Yes, under § 363 with court approval	Limited number of states provide for sales free and clear and sometimes possible by court order, but narrower	Limited number of states provide for sales free and clear and sometimes possible by court order; generally no true “free and clear”; buyer relies on contract and state law

# Impact of Federal Priority of Claims Act

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Federal priorities expressly integrated into Bankruptcy Code	May apply depending on receiver type and federal involvement	Generally, applies outside bankruptcy; can disadvantage other creditors

# Filing/Allowance/Discharge of Claims

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Formal claims process; discharge available (corporate liquidation has no discharge but individuals do)	No discharge; claims resolved through distribution	No discharge; claims resolved through distribution only

## Interstate Matters

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Broad jurisdiction of the bankruptcy court to cover nationwide assets	Receiver court's jurisdiction over the debtor's assets does not generally extend to assets located outside of the forum state and persons not otherwise subject to the court's jurisdiction, often requiring an ancillary receivership	Problematic when the assignment is in State A and assets of the assignor are located in State B. Under UABCA, if both states have adopted UABCA, State B is generally required to recognize the assignment in State A

# Length and Cost of Process

<b>Bankruptcy (Chapter 7/11)</b>	<b>Receivership</b>	<b>ABC (Assignment for the Benefit of Creditors)</b>
Often lengthy and expensive, especially Chapter 11; need to do cost-benefit analysis	Moderate; often faster and less expensive than bankruptcy but still court-driven; need to do cost-benefit analysis	Usually fastest and least expensive option; need to do cost-benefit analysis

**Thank You**