

CATEGORY STRUCTURE		SUMMARY	KEY CONSIDERATIONS		
			Deal Expense	Execution Speed	Post-Closing Liability
Traditional	<b>Equity Purchase</b>	<ul style="list-style-type: none"> <li>Target equity acquired directly or via a merger.</li> <li>Buyer bears the risk of all target liabilities.</li> <li>Buyer should require Target to pay before closing all known liabilities.</li> <li>Indemnity can mitigate liability, but recourse may be impaired if equityholders receive little/no consideration.</li> <li>Buyer should consider obtaining representation and warranty insurance ("RWI").</li> </ul>			
	<b>Asset Purchase</b>	<ul style="list-style-type: none"> <li>Seller assets acquired (all or in part).</li> <li>Seller retains all pre-closing liabilities, except for specific liabilities assumed by Buyer by contract or operation of law.</li> <li>Same indemnity and RWI considerations as Equity Purchase above.</li> </ul>			
	<b>"Acqui-Hire" – License and Waiver</b>	<ul style="list-style-type: none"> <li>Buyer hires certain seller employees/service providers, receives a robust release of claims and receives a non-exclusive license to use seller IP (optional).</li> <li>No equity, assets or liabilities are transferred.</li> <li>Same indemnity considerations as Equity Purchase above.</li> <li>RWI likely not available.</li> </ul>			
Out-of-Court	<b>"ABC" – Assignment for Benefit of Creditors</b>	<ul style="list-style-type: none"> <li>Seller assigns assets to an assignee.</li> <li>Assignee liquidates the assets and distributes proceeds to creditors.</li> <li>Assets generally transferred free and clear of liens and liabilities, except for (1) claims by creditors senior to foreclosing party and (2) risk that bankruptcy court may later unwind sale.</li> </ul>			
	<b>Foreclosure (Private Sale)</b>	<ul style="list-style-type: none"> <li>Creditor forecloses on, and then sells, defaulting seller's secured assets.</li> <li>Buyer must be a third party - foreclosing creditor cannot buy assets (subject to limited exceptions).</li> <li>Assets generally transferred free and clear of liens and liabilities, except for (1) claims by creditors senior to foreclosing party and (2) risk that bankruptcy court may later unwind sale.</li> </ul>			
	<b>Foreclosure (Public Sale)</b>	<p>Same as private foreclosure sale except:</p> <ul style="list-style-type: none"> <li>Sale must be advertised and accessible to general public (which adds time to sale process).</li> <li>Foreclosing creditor may bid for/acquire the assets (and therefore competes with any buyer).</li> <li>Lower risk of bankruptcy court scrutinizing/unwinding sale due to fairer process.</li> </ul>			
	<b>Section 363 Sale</b>	<ul style="list-style-type: none"> <li>Process: <ol style="list-style-type: none"> <li>Seller finds a "stalking horse" bidder to acquire its assets.</li> <li>Seller and stalking horse sign asset purchase agreement ("APA"), which includes auction procedures, topping rights and break-up fee/expense reimbursement.</li> <li>Seller files a motion in bankruptcy court. Can be before or after stalking horse identified.</li> <li>Creditors notified and formal auction conducted (~20-30 days). Bidders propose purchase price and edits to stalking horse APA.</li> <li>Seller seeks court approval after final bidder selected.</li> </ol> </li> <li>Creditor approval required with respect to its secured collateral.</li> <li>Assets transferred free and clear of liens and liabilities.</li> </ul>			
In-Court	<b>Pre-Packaged &amp; Pre-Negotiated Bankruptcy Plans</b>	<ul style="list-style-type: none"> <li>Creditors and company negotiate a plan of reorganization before filing in bankruptcy court which allows company to be sold as a going concern.</li> <li>Pre-packaged plan: formal creditor vote obtained before filing.</li> <li>Pre-negotiated plan: creditor vote not obtained before filing, but agreements with key creditors and lock-up/support agreements evidence approval.</li> <li>Securities issued pursuant to court approved plan exempt from registration under the Securities Act of 1933 and "Blue Sky" laws.</li> <li>Usually faster than a "free-fall" bankruptcy, where debtor files with no plan.</li> </ul>			
	<b>"Free Fall" Bankruptcy Filing</b>	<ul style="list-style-type: none"> <li>Debtor files for bankruptcy with no pre-agreed exit from bankruptcy and relies upon Chapter 11 protections to negotiate with creditors and possible buyers.</li> <li>Longer time frame to resolution compared to other in-court proceedings.</li> <li>Rare event for larger companies.</li> <li>Creditors and debtor attempt to resolve plan during pendency of the case.</li> <li>Securities issued pursuant to court approved exit exempt from registration under the Securities Act of 1933 and "Blue Sky" laws.</li> </ul>			