

# Mezzanine Lenders: Navigating an Insolvent Borrower

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# About Robinson+Cole

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We have an active private equity and acquisition finance practice, with decades of experience representing buyers, sellers and mezzanine lenders in lower middle market transactions throughout the United States. Our team has deep industry experience in areas such as manufacturing, healthcare products and services, transportation and logistics, aerospace, digital media, software, financial technology, food and beverage and retail. Our team consists of more than 30 lawyers with varying specialties, including M&A, acquisition finance, tax, fund formation, securities, healthcare, intellectual property, employment and benefits, and real estate. We would welcome the opportunity for a discussion.

For more information on the firm and our practice offerings, go to [www.rc.com](http://www.rc.com).

# About Graycliff Partners

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Graycliff manages private equity and credit investments in U.S. lower middle-market companies, typically in niche manufacturing, business services, and value-added distribution. As we enter our third decade of investing, we firmly believe our relationships have been our greatest asset.

For more information on Graycliff, please visit the firm website at <https://graycliffpartners.com/>.

# Of Note

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We note that in this presentation we are only providing general information; the information contained in this presentation does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, please contact us directly.

# Statutory Construct

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- Article 9 of the Uniform Commercial Code
  - Secured creditor may take possession of personal property collateral upon default, with or without judicial process
  - Creditor may repossess without judicial process “if it proceeds without breach of the peace” - UCC § 9-609(b)(2)
  - Allows a personal property foreclosure to be joined with a real estate foreclosure if security agreement covers both
- State Court Receivership
- Assignment for Benefit of Creditors
- Delaware Statutory Trust
- Relief under Bankruptcy Code

# Small Business Reorganization Act of 2019 (*New Subchapter V*)

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- A person (1) engaged in a commercial business activity, excluding the ownership of single asset real estate
- Non-contingent liquidated secured and unsecured debt as of the date of the filing of the petition not more than \$2.7MM (CARES Act \$7.5MM March 27, 2021);
- Reduce cost of Chapter 11;
- Easier retention of counsel;
- Only Debtor can file plan
- Absolute Priority Rule not priority to confirmation
- The Debtor may confirm a cramdown plan without the approval of any class of creditors.
- Stretching Administrative Expense payments

# Key Provisions to consider to protect Mezzanine Lender in Mezzanine/Intercreditor Agreements:

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1. Senior Debt Cap
2. Bankruptcy/DIP Financing Provisions
  - a) Adequate Protection Liens
  - b) DIP Provisions
  - c) Preservation of Unsecured Creditor Rights
3. Standstill Terms
4. Amendment to Senior Loan Document Provisions
5. Purchase Options

Questions?