

## Highlights to 2026 Edition

### Themes & Trends<sup>1</sup>

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The 2026 Edition of *Strategic Alternatives for and Against Distressed Businesses* continues its mission: giving practitioners, lenders, investors, and business owners a clear-eyed roadmap of the tools available to distressed companies outside of traditional Chapter 11.

The trend we have been observing for years now—companies and their various stakeholders favoring, when feasible, non-bankruptcy processes such as assignments for the benefit of creditors (ABCs), receiverships, and Article 9 sales—has only accelerated. Traditional Chapter 11 remains too expensive, too slow, and often too unpredictable for many small and midsize businesses.

The basic structure of the 2026 Edition remains unchanged from recent past years: Part 1 is a primer, designed to be read like a textbook that aims to paint a complete picture of the options available to financially distressed organizations and their various constituents. Parts 2 and 3 are a field guide, designed to enable a reader to quickly compare and contrast how an ABC (Part 2) and a state court receivership (Part 3) works from state to state.

The legislative and judicial developments of 2025, and those now shaping the 2026 landscape, share a common theme: modernization and standardization of the alternatives to traditional Chapter 11. These themes were and will continue to be most pronounced in three ways: UABCA, UCRERA, and Subchapter V (each defined below). And these themes weave their way through this 2026 Edition. A bit more about each:

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<sup>1</sup> This section incorporates, with permission, material substantially similar to the authors' article published in a December 2025 issue of *The National Law Review* and subsequently on DailyDAC. We gratefully acknowledge The National Law Review for authorizing its reuse.

## ***The Uniform Assignment for Benefit of Creditors Act***

In October 2025, the Uniform Law Commission promulgated the Uniform Assignment for Benefit of Creditors Act (“**UABCA**”).<sup>2</sup> ABCs have been used by faltering companies in many states since long before the modern Bankruptcy Code was legislated into existence in 1978. In other states, however, they are not used at all, often because such states have antiquated or underdeveloped state statutes governing them.

UABCA aims to change that. If adopted widely, it will give ABCs something they have never had before: statutory uniformity. Among other things, UABCA:

- Permits judicial involvement without requiring routine court supervision, making it attractive to both states that historically supervise ABCs and those that do not. Codifies that an assignee is a fiduciary with duties of loyalty, to maximize value, and to efficiently administer the assets put in their charge.
- Grants the assignee lien-creditor status for personal property and bona-fide-purchaser status for real property, resolving long-standing ambiguity around priority over unperfected liens.
- Sets forth a mandatory claim process under which creditors must file proofs of claim within 90–210 days.
- Provides that filing a claim constitutes consent to court jurisdiction (if invoked) and assigns voidable-transaction claims exclusively to the assignee.
- Instructs courts to recognize assignments made under the law of another adopting state and limits forum shopping by clarifying that an assignee’s residence or principal place of business is not a basis for jurisdiction.
- Establishes a consistent waterfall: administrative costs, federal priority claims, certain wage claims, then general unsecured creditors.

An ABC, by definition, is an alternative the debtor (i.e., the company in distress) must invoke. It is thus, referencing

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<sup>2</sup> See *Coordes & Friedland, Brought to You by the Makers of the UCC: The Uniform Assignment for Benefit of Creditors Act* (DailyDAC, October 30, 2025) (available at <https://www.dailydac.com/brought-to-you-by-the-makers-of-the-ucc-the-uniform-assignment-for-benefit-of-creditors-act/>).

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the title of this treatise, a strategic alternative for distressed businesses. The Uniform Law Commission started earlier in terms of facilitating the uniformity of a key strategic alternative against distressed businesses.

We refer to the Uniform Commercial Real Estate Receivership Act (“**UCRERA**”).

## **UCRERA**

UCRERA, which has already been enacted in 15 states plus DC, continues to fill long-standing gaps in state receivership law.

One of the most important things to understand about UCRERA is that its name is a serious misnomer. Although originally focused on commercial real property, several states have expanded UCRERA to permit operating-company receiverships. UCRERA’s provisions include the following:

- Unlike most general receivership statutes, UCRERA imposes an automatic stay as to actions seeking possession or enforcement against receivership property, with important exceptions, including perfection of interests.
- UCRERA diverges sharply from the Bankruptcy Code: a pre-appointment security agreement generally continues to attach to after-acquired property unless state law dictates otherwise.
- Receivers operating under UCRERA may sell assets outside the ordinary course, potentially free and clear of liens.
- With court approval, UCRERA permits receivers to assume or reject executory contracts, similar to (but not identical with) the bankruptcy framework.

## **Subchapter V of Chapter 11**

The title of this treatise includes the word “alternatives.” A reasonable reader may ask, “alternatives to what?” When originally conceived, the word “alternatives” was used as a synonym to the word “options.” That said, the ‘game to beat,’ to turn a phrase, is traditional Chapter 11. Why?

Traditional Chapter 11 is powerful medicine. It can sometimes achieve for a distressed company results that

simply are not achievable by any other means. Traditional Chapter 11 is also the remedy most restructuring professionals know the most about. For this reason, to turn another phrase, traditional Chapter 11's prevalence in the mind of restructuring professionals benefits from the 'when you're a hammer every problem is a nail' phenomenon.

Subchapter V of Chapter 11 is, from a taxonomical perspective, surely a type of Chapter 11. And *most* of Subchapter V's mechanics, the case law by which it is interpreted, and its general practice are not *that* different from traditional Chapter 11. If we were talking about biological entities, we might suggest they share 96% of the same DNA, a percentage we have selected nominally to illustrate a point, the same differential between humans and apes.

However, Subchapter V is so *qualitatively* different from traditional Chapter 11 that it is reasonably considered as an *alternative* to traditional Chapter 11. These differences, which include the elimination of the absolute priority rule, the near elimination of disclosure statements and creditors' committees, and the existence of a Subchapter V trustee, all serve to make Subchapter V a far better alternative for certain distressed companies than traditional Chapter 11.

One of the most important things to understand about Subchapter V is that its ostensible debt limit is widely misunderstood. The debt limit to qualify for Subchapter V is based on the statutory ceiling for a "small business debtor." Since April 1, 2025, the threshold has been \$3,424,000. But this threshold applies *only* to the debtor's aggregate noncontingent, liquidated secured and unsecured debts to non-insiders. The terms "noncontingent," "liquidated," and "insider" are not as clearcut as they may appear on the surface.<sup>3</sup>

Recall, Subchapter V went into effect only in February 2020. That makes it a kindergartner as compared to traditional Chapter 11, which turns 47 in 2026. Case law will continue to develop rapidly in 2026, as it did in 2025,

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<sup>3</sup> Some debtors have successfully used Subchapter V to deal with companies saddled with tens or even hundreds of millions of dollars of contingent and unliquidated claims. E.g. *In re Velsicol Chemical LLC* (23 B 12544); *In re Flix Brewhouse Texas V LLC* (3:21-bk-30526) (both cases in which one of the authors of this *Highlights* section represented the debtor). See also Friedland, et al., *Subchapter V of Chapter 11: A User's Guide* (available at <https://www.dailydac.com/subchapter-v-of-chapter-11-the-complete-users-guide/>).

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and this case law will continue to shape Subchapter V's development and use.