

Common Intercreditor Agreement Provisions

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- **Mutual acknowledgment of, and agreement not to challenge, liens and relative lien priorities**
 - Relative priority among parties effective even if senior lien or claim is effectively challenged by debtor or third parties
 - Turnover provisions for non-complying recoveries by second lien creditors
- **Second lien creditors are subject to a remedies standstill notwithstanding second lien defaults**
 - Standstill may be limited to a specified time period
- **Second lien creditors are subject to payment blockage if there are first lien defaults**
 - Default, Event of Default and/or Acceleration of first lien debt may be trigger for payment blockage
 - Payment blockage may be limited to a specified time period
- **Second lien creditors consent to possible future changes in first lien documents**
 - Amount of covered first lien debt may be capped
 - Pricing and maturity changes may be subject to restrictions
 - Second lien creditors agree not to change the second lien documents

N.B. Not all Intercreditor Agreements contain all of the foregoing provisions

- **Other consents and waivers by second lien creditors in favor of first lien creditors**
 - Consent to asset sales approved by first lien creditors, and release of second liens on collateral released by first lien creditors
 - Waive marshalling rights, claims relating to exercise of remedies and subrogation rights (until first lien claims have been paid in full)
- **Option in favor of second lien creditors to buy first lien debt at par**
 - Triggered by remedies standstill/payment blockage
 - Deadlines to exercise and close option
- **Post-bankruptcy provisions**
 - Pre-bankruptcy provisions remain applicable
 - Second lien creditors consent to DIP financing and priming lien by first lien creditors (or to which first lien creditors have consented)
 - Second lien creditors consent to use of cash collateral to which first lien creditors have consented
 - Second lien creditors consent to all adequate protection afforded to first lien creditors
 - Second lien creditors waive adequate protection rights, except rights to adequate protection liens junior to first lien creditors' adequate protection liens
 - Second lien creditors consent to exercise of remedies by first lien creditors, and agree not to exercise their own remedies (including section 362 relief)
 - First lien is reinstated with respect to any claim arising from an avoidance recovery
 - Second lien creditors agree that first lien creditors control plan votes on second lien claims

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