

# Task Force Co-Chairs' Preface

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Several years ago, Patricia Redmond asked the Task Force Chairs to consider drafting a model Asset Purchase Agreement for bankruptcy sales. At the time, Mrs. Redmond served as the Chair of the Business Bankruptcy Committee of the American Bar Association's Business Law Section. Her idea was to create a uniform, model asset purchase agreement that practitioners could use for bankruptcy sales. The Task Force was born.

The Task Force commenced this project using the Negotiated Acquisitions Committee's 2001 Model Asset Purchase Agreement as a guide. The Bankruptcy Model Asset Purchase Agreement differs in many respects from the 2001 non-bankruptcy version because an asset purchase in a bankruptcy context is quite different from an asset purchase outside of bankruptcy given legal issues and customs. The Bankruptcy Model Asset Purchase Agreement highlights the differences, includes commentary as a teaching mechanism, and provides ancillary documents and appendices.

This publication is not a stand-alone asset purchase agreement. Instead, it highlights how certain terms and provisions may vary between a bankruptcy and a non-bankruptcy sale and, in some circumstances, provides commentary and case law to explain the reasoning underlying those variations. As such, this publication about bankruptcy asset purchase agreements (and sales generally) does not include provisions that do not vary between a sale that would be consummated in bankruptcy and one that would be consummated outside of bankruptcy. For example, a definition for "Assets" is not included in this publication as it is generally identical in a bankruptcy and non-bankruptcy asset purchase agreement. In addition, sample provisions and language not typically in non-bankruptcy asset purchase agreement are included—provisions concerning bid procedures, credit bidding rights, and executory contracts, for example. Thus, this publication should be used in conjunction with another asset purchase agreement and, in particular, the Negotiated Acquisitions Committee's 2001 Model Asset Purchase Agreement. Such an approach will provide a reader with a comprehensive and flexible agreement for bankruptcy sales as well as a deep understanding of the purposes underlying each provision.

Throughout this publication, the Negotiated Acquisitions Committee's 2001 Model Asset Purchase Agreement is referred to as the "Model Agreement." While the Model Agreement uses the term "Part" to refer to the schedules to the Model Agreement, this publication instead uses the term "Schedule."

The members of the Bankruptcy Model Asset Purchase Agreement Task Force are:

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Donald R. Kirk (Co-Chair)	.....	Tampa, FL
Adam C. Maerov (Co-Chair)	.....	Calgary, AB
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The effort put forth by the Task Force members was substantial. The Co-Chairs and members spent countless hours in meetings at American Bar Association conferences and in engaging in the research necessary to draft the Bankruptcy Model Asset Purchase Agreement. The Task Force also worked with numerous members of their own law firms and companies as additional resources to complete the project. We are thankful for everyone’s tireless and persistent effort.

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Model Asset Purchase Agreement Task Force