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Strict Foreclosure in Private Credit Restructuring

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This Practice Note explains how private credit lenders can use this powerful out-of-court restructuring tool to take ownership of collateral in full or partial satisfaction of a defaulted debt, offering a potentially faster and more cost-effective alternative to a Chapter 11 bankruptcy. Authored by Proskauer partner David Hillman and associates Maximillian Greenberg and Libbie B. Osaben, it outlines the core mechanics of the process, including the requirements for a proposal and the necessary consents from the borrower, guarantors, and other stakeholders. This Practice Note also examines the critical strategic decision between foreclosing on equity versus assets, detailing the distinct challenges and advantages of each path as it relates to legacy liabilities, change-of-control provisions, and operational continuity. It also compares the benefits of a strict foreclosure with an asset sale under section 363 of the Bankruptcy Code, highlighting the important trade-offs for lenders to consider.

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