

[Task Force on Model Intercreditor Agreement](#)

Gary D. Chamblee, Chair, Alyson B.G. Allen, R. Christian Brose, Richard K. Brown, Robert L. Cunningham, Jr., Jane Summers, and Randall Klein, Vice Chairs

The Model Intercreditor Agreement Task Force was formed to develop a market-based form of intercreditor agreement for intercreditor arrangements between first and second lien creditors holding liens on common collateral. The interest in developing a model intercreditor agreement grew out of the tremendous growth in the second lien market over the last several years. Despite the decline in second lien financing transactions and other highly-leveraged loans during the current financial crisis, interest in the issues raised by the Task Force and the Model Agreement remains high. The Task Force has grown to over 180 members and there has been active participation by members in discussions of the evolving drafts of the Model Agreement. One of the reasons for this interest is that there are many intercreditor agreements still in place for outstanding loans and, as defaults increase, the existing agreements will be tested both inside and outside of bankruptcy. There have been relatively few bankruptcy cases dealing with intercreditor agreements in detail and those cases have produced differing holdings concerning the validity of waivers and other common provisions in intercreditor arrangements. In addition, as existing unsecured creditors push to obtain collateral in the present economic environment, many of the issues being addressed by the Task Force are coming to the forefront in new guises. Over the past several months, the Task Force has held a series of phone meetings led by various Vice Chairs of the Task Force to discuss proposed revisions to the Model Agreement. Bob Cunningham of Gibson, Dunn & Crutcher, LLP began the process with an extensive revision of the lien priority provisions, including detailed provisions for dealing with first and second lien caps and the definition of “common collateral” together with optional provisions addressing other concerns of both first lien and second lien lenders. Christian Brose with McGuire Woods LLP followed that up with a revision of the modification and amendment provisions of the Agreement. Vice Chairs Alyson Allen of Ropes & Gray LLP and Randall Klein of Goldberg Kohn then took on the difficult task of revising the bankruptcy provisions of the Model Agreement. Two phone meetings were devoted to discussing the bankruptcy provisions followed by an all-day drafting session in San Francisco at the Fall meeting led by Randall Klein. In addition to all of this activity, Gary Chamblee along with Bob Cunningham, Rick Brown and Tony Callobre participated in a panel discussion on “Negotiating Intercreditor Agreements” as part of the ALI-ABA Course of Study, Commercial Lending and Banking Law--2009, January 29-31, 2009. Information about the Task Force and the latest draft of the Model Agreement is posted on the Task Force website at <http://www.abanet.org/dch/committee.cfm?com=CL190029>.