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Kramer and Khalid in Bloomberg Law: Addressing Defaults in Private Credit

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Haynes Boone Partner **Greg Kramer** and Counsel **Sabreena Khalid** authored an article for Practical Guidance from *Bloomberg Law* analyzing the risks private credit lenders must consider when negotiating with distressed borrowers.

Read an excerpt from the article below.

Defaults happen in any market, and private credit is no exception. Optimism about the sector's ability to generate consistent, superior risk-adjusted returns gave way to fear, and market watchers began hunting for distress. Whether the fear is warranted or not, lenders must plan for the headwinds that impact even the most sound portfolio. This article distills the lessons that matter most for counsel representing direct lenders through borrower defaults.

Formally Reserve Rights

Once an event of default occurs, the lender should deliver a formal reservation of rights letter to all obligors immediately. This letter notifies the obligors that a default has occurred and that, while the lender is not yet exercising its remedies, it reserves the right to do so at any time. A carefully worded reservation of rights letter serves two critical functions: it prevents waiver arguments based on lender delay or conduct, and it creates a non-prejudicial space for workout discussions. While a borrower may struggle to prove waiver or modification by course of conduct even without a reservation of rights, the letter's existence will likely foreclose the argument altogether — keeping it from surfacing as a defense to enforcement of the loan documents. For private credit lenders, which often emphasize maintaining positive and cooperative relationships with borrowers, delivering formal legal notices like a reservation of rights letter may seem daunting or antithetical to a core institutional value. However, the reservation of rights letter need not convey hostility: it can be crafted to achieve its legal purpose while maintaining a cooperative and constructive tone.

Do not communicate with text messages or get legal advice from AI

Text messaging is a fact of modern life, but it has no place in substantive credit communications and especially with respect to matters that could result in litigation. Lenders must not discuss loan matters with borrowers by text under any circumstances. Text messages are the most likely form of written communication to be taken out of context or misinterpreted in hindsight, and the medium is simply not conducive to thoughtful composition or nuance. Not every communication with a borrower needs to be a legal document, but it should be deliberate, properly contextualized, and contain short legal disclaimers—such as "This e-mail is without prejudice to the Lender's rights and remedies, all of which are reserved" and/or "Subject to FRE 408 and state law equivalents."

Read the full article from the *Bloomberg Law* **here**.