ATTORNEYS
Larry G. Halperin
Keith N. Sambur

"Enforcement of Creditors' Rights Under the UCC: Is Shareholder Consent Required?" by Larry Halperin and Keith Sambur

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Boards of directors of troubled companies must balance their fiduciary obligations to shareholders and creditors. What does the board do when a secured creditor offers to accept all or substantially all of the corporation's assets, in full or partial satisfaction of the corporation's debt to the secured creditor? Does the board need to obtain shareholder consent when it effectively sells all of its assets to a creditor exercising foreclosure remedies even though the board can authorize an "all assets" pledge without shareholder consent? Logically, if a corporation can pledge assets to a lender without shareholder consent then shareholders should not expect to be able to interfere with the lender's right to foreclose upon such assets.

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