

## Part 15 Structured Settlement Protection Act

### **78B-6-1501 Title.**

This part is known as the "Structured Settlement Protection Act."

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-6-1502 Definitions.**

For purposes of this part:

- (1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
- (2) "Dependents" include:
  - (a) a payee's spouse;
  - (b) a payee's minor children; and
  - (c) all other persons for whom the payee is legally obligated to provide support, including alimony.
- (3) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.
- (4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.
- (5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.
- (6) "Interested parties" means, with respect to any structured settlement:
  - (a) the payee;
  - (b) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;
  - (c) the annuity issuer;
  - (d) the structured settlement obligor; and
  - (e) any other party that has continuing rights or obligations under the structured settlement.
- (7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection 78B-6-1503(5).
- (8) "Payee" means an individual who:
  - (a) is receiving tax free payments under a structured settlement; and
  - (b) proposes to make a transfer of payment rights under the settlement.
- (9) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.
- (10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code.
- (11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.
- (12) "Settled claim" means the original tort claim resolved by a structured settlement.

- (13) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.
- (14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.
- (15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.
- (16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer if:
  - (a)
    - (i) the payee is domiciled in this state; or
    - (ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;
  - (b) the structured settlement agreement is approved by a court in this state; or
  - (c) the structured settlement agreement is expressly governed by the laws of this state.
- (17) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of:
  - (a) the structured settlement agreement;
  - (b) the annuity contract;
  - (c) any qualified assignment agreement; and
  - (d) any order or other approval of any court or other government authority that authorized or approved the structured settlement.
- (18)
  - (a) Subject to Subsection (18)(b), "transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.
  - (b) "Transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:
    - (i) redirect the structured settlement payments to:
      - (A) the insured depository institution; or
      - (B) an agent or successor in interest to the insured depository institution; or
    - (ii) otherwise enforce a blanket security interest against the structured settlement payment rights.
- (19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.
- (20)
  - (a) Subject to Subsection (20)(b), "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including:
    - (i) court filing fees;
    - (ii) attorney fees;
    - (iii) escrow fees;
    - (iv) lien recordation fees;
    - (v) judgment and lien search fees;
    - (vi) finders' fees;
    - (vii) commissions; and
    - (viii) other payments to a broker or other intermediary.

- (b) "Transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.
- (21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1503 Required disclosures to payee.**

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point, setting forth:

- (1) the amounts and due dates of the structured settlement payments to be transferred;
- (2) the aggregate amount of the payments;
- (3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating the discounted present value;
- (4) the gross advance amount;
- (5) an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of the fees and disbursements;
- (6) the net advance amount;
- (7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

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**78B-6-1504 Approval of transfers of structured settlement payment rights.**

Direct or indirect transfer of structured settlement payment rights may not be effective and a structured settlement obligor or annuity issuer may not be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

- (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

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**78B-6-1505 Effects of transfer of structured settlement payment rights.**

Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.
- (2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
  - (a) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and
  - (b) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this part.
- (3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.
- (4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this part.

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**78B-6-1506 Procedure for approval of transfers.**

- (1) An application under this part for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.
- (2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 78B-6-1504, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with the notice:
  - (a) a copy of the transferee's application;
  - (b) a copy of the transfer agreement;
  - (c) a copy of the disclosure statement required under Section 78B-6-1503;
  - (d) a listing of each of the payee's dependents, together with each dependent's age;
  - (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
  - (f) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1507 General provisions -- Construction.**

- (1) The provisions of this part may not be waived by any payee.
- (2)
  - (a) Any transfer agreement entered into on or after May 6, 2002 by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state.
  - (b) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

- (3) The transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee establishes and agrees to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:
  - (a) periodically confirming the payee's survival; and
  - (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.
- (4) A payee who proposes to make a transfer of structured settlement payment rights may not incur any of the following on the basis of a failure of the transfer to satisfy the requirements of this part:
  - (a) a penalty;
  - (b) a forfeiture of any application fee or other payment; or
  - (c) any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the requirements of this part.
- (5)
  - (a) This part may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before May 6, 2002 is valid or invalid.
  - (b) This part does not apply to a transfer of payment rights under workers' compensation, as defined in Section 34A-2-422, that takes effect on or after April 30, 2007.
- (6) Compliance with Section 78B-6-1503 and fulfillment of the conditions set forth in Section 78B-6-1504 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

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**78B-6-1508 Effective date.**

This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after May 6, 2002; provided, however, that nothing contained in this part shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.

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