

New York Structured Settlement Protection Act

General Obligations

TITLE 17

STRUCTURED SETTLEMENT PROTECTION ACT

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§ 5-1701. Definitions. For purposes of this title:

(a) "annuity issuer" means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(b) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony or maintenance;

(c) "discounted present value" means the present value of future payments, as determined by discounting such 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;

(d) "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 such consideration;

(e) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser:

(i) who is engaged by a claimant or payee to render advice concerning the legal, tax and financial implications of a structured settlement or a transfer of structured settlement payment rights;

(ii) who is not in any manner affiliated with or compensated by the defendant in such settlement or the transferee of such transfer; and

(iii) whose compensation for rendering such advice is not affected by whether a settlement or transfer occurs or does not occur;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the expenses required to be disclosed under subdivision (f) of section 5-1703 of this title;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment

rights thereunder;

(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) "settled claim" means the original tort claim resolved by a structured settlement;

(l) "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;

(m) "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(n) "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;

(o) "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state;

(ii) the structured settlement agreement was approved by a court in this state; or

(iii) the structured settlement agreement is expressly governed by the laws of this state;

(p) "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or approval of any court authorizing or approving such structured settlement;

(q) "transfer means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "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 redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(r) "transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee;

(s) "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, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer; and

(t) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer or restructuring.

§ 5-1702. Initial disclosure of structured settlement terms. In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in this state, the defendant or defendant's

legal representative shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

(a) the amounts and due dates of the periodic payments to be made under the structured settlement agreement. In the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded;

(b) the amount of the premium payable to the annuity issuer;

(c) the nature and amount of any cost that may be deducted from any of the periodic payments;

(d) where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law; and

(e) a statement that the claimant is advised to obtain independent professional advice relating to the legal, tax and financial implications of the settlement, including any adverse consequences and that the defendant or defendant's legal representative may not refer any advisor, attorney or firm for such purpose.

§ 5-1703. Required disclosures to payee. Not less than ten days prior to the date on which the payee signs a transfer agreement, the transferee shall provide to the payee by first class mail and certified mail, return receipt requested or United States postal service priority mail, a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) 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 such discounted present value;

(d) the price quote from the original annuity issuer or, if such price quote is not readily available from the original annuity issuer, then a price quote from two other annuity issuers that reflects the current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred;

(e) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;

(f) an itemized listing of all commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee and the total amount of such fees;

(g) the net advance amount including the statement: "The net cash payment you receive in this transaction from the buyer was determined by applying the specified discount rate to the amount of future payments received by the buyer, less the total amount of commissions, fees, costs, expenses and charges payable by you";

(h) 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

(i) 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.

§ 5-1704. Provisions prohibited in transfer agreement. No transfer agreement or other document or agreement executed in association with the transfer shall contain any provision described in this section. To

the extent that a prohibited provision is included in a transfer agreement such provision shall be void and unenforceable. A prohibited provision is:

(a) any provision that waives the payee's right to sue under any law, or where the payee agrees not to sue, or which waives jurisdiction or standing to sue under the transfer agreement;

(b) any provision that requires the payee to indemnify and hold harmless the transferee, or to pay the transferee's costs of defense, in any claim or action brought by the payee on or the payee's behalf contesting the transfer for any reason;

(c) any provision that requires the payee to pay the transferee's attorney's fees or costs if the transfer contemplated by the transfer agreement is not completed; and

(d) any provision that requires the payee to pay any tax liability arising under federal tax laws, other than the seller's own tax liability, if any, that results from the transfer.

§ 5-1705. Procedure for approval of transfers. (a) An action for approval of a transfer of a structured settlement shall be by a special proceeding brought on only by order to show cause.

(b) Such proceeding shall be commenced to obtain approval of a transfer of structured settlement payment rights. Such proceeding shall be commenced:

(i) in the supreme court of the county in which the payee resides; or

(ii) in any court which approved the structured settlement agreement.

(c) A copy of the order to show cause and petition shall be served upon all interested parties at least twenty days before the time at which the petition is noticed to be heard. A response shall be served at least seven days before the petition is noticed to be heard.

(d) A petition for approval of a transfer of structured settlement payment rights shall include:

(i) a copy of the transfer agreement;

(ii) a copy of the disclosure statement and proof of notice of that statement required under section 5-1703 of this title;

(iii) a listing of each of the payee's dependents, together with each dependent's age; and

(iv) a statement setting forth whether there have been any previous transfers or applications for transfer of the structured settlement payment rights and giving details of all such transfers or applications for transfer.

(e) On the hearing, the payee shall attend before the court unless attendance is excused for good cause.

§ 5-1706. Approval of transfers of structured settlement payment rights. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction based upon express findings by such court that:

(a) the transfer complies with the requirements of this title;

(b) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependants; and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable. Provided the court makes the findings as outlined in this subdivision, there is no requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this

subdivision;

(c) 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;

(d) the transfer does not contravene any applicable statute or the order of any court or other government authority; and

(e) is written in plain language and in compliance with section 5-702 of this article.

§ 5-1707. Effects of transfer of structured settlement payment rights. Following a transfer of structured settlement payment rights under this title:

(a) 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;

(b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this title;

(c) 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; and

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this title.

§ 5-1708. General provisions; construction. (a) The provisions of this title may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this title by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this title.

(e) Nothing contained in this title shall be construed to authorize any transfer of structured settlement payment rights in contravention of any statute or to imply that any transfer under a transfer agreement entered into prior to the effective date of this title is valid or invalid.

(f) Compliance with the requirements set forth in section 5-1703 of

this title and fulfillment of the conditions set forth in section 5-1705 of this title 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, non-compliance with such requirements or failure to fulfill such conditions.

(g) The assignee of any transfer agreement or any agreement executed in connection therewith, shall be subject to all claims and defenses of the payee against the transferee arising from such transfer agreement notwithstanding any agreement to the contrary. Recovery hereunder by the payee shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the payee under this provision can be asserted affirmatively against a claim by the assignee.

§ 5-1708-a. Waiver for families of victims of terrorist attacks. Notwithstanding the provisions of section four thousand two hundred twenty-four of the insurance law:

(a) An annuity issuer, or an employee or other representative of such issuer, shall be permitted to waive or offer to waive the commission or other compensation otherwise payable thereto as a result of the sale of a policy or contract subject to the provisions of section four thousand two hundred twenty-four of the insurance law to a member of the immediate family of a person who was a victim of the September eleventh, two thousand one terrorist attacks against the United States; and

(b) In connection with such waiver, the insurance company may, at the election of the policyowner or contract owner:

(i) contribute the amount of such waived commission or other compensation to a charitable organization that meets the requirements of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is organized for the benefit of families of victims of such attack; or

(ii) deduct from the premium an amount equal to such waived commission or other compensation otherwise payable thereto as a result of the sale.

(c) For purposes of this section, the term "victim" shall mean a decedent who died as a result of wounds or injury incurred as a result of the terrorist attacks against the World Trade Center or the Pentagon on September eleventh, two thousand one, or the terrorist-related aircraft crash in Pennsylvania on such date, but shall not include any individual identified by the United States attorney general to have been a participant or conspirator in such attack or a representative of such an individual.

(d) An issuer seeking to avail itself of the provisions of this section shall first submit its plan of implementation to the superintendent of financial services for prior approval. If the plan is approved, such issuer shall thereafter, upon request of such superintendent, submit a report to such superintendent regarding its experience in the implementation of such provisions.

§ 5-1709. Enforcement. (a) In addition to the other remedies provided, whenever there shall be a violation of this title, application may be made by the attorney general in the name of the people of the state of New York to a court of competent jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this title, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceedings, the court may make allowances to the attorney general as provided in paragraph six of

subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this title has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) Any payee injured by a violation of this title may bring an action for the recovery of damages. The court may award reasonable attorney's fees to the prevailing plaintiff.