

Arizona Structured Settlements Protection Statutes

AN ACT

AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 20; RELATING TO STRUCTURED SETTLEMENTS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, Arizona Revised Statutes, is amended by adding chapter 20, to read:

ARTICLE 1. GENERAL PROVISIONS

12-2901. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ANNUITY ISSUER" MEANS AN INSURER THAT HAS ISSUED AN INSURANCE CONTRACT THAT IS USED TO FUND PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT.

2. "APPLICABLE LAW" MEANS ALL OF THE FOLLOWING:

(a) THE FEDERAL LAWS OF THE UNITED STATES.

(b) THE LAWS OF THIS STATE, INCLUDING PRINCIPLES OF EQUITY APPLIED IN THE COURTS OF THIS STATE.

(c) THE LAWS OF ANY OTHER JURISDICTION:

(i) THAT IS THE DOMICILE OF THE PAYEE OR ANY OTHER INTERESTED PARTY.

(ii) UNDER WHOSE LAWS A STRUCTURED SETTLEMENT AGREEMENT WAS APPROVED BY A COURT.

(iii) IN WHOSE COURTS A SETTLED CLAIM WAS PENDING WHEN THE PARTIES ENTERED INTO A STRUCTURED SETTLEMENT AGREEMENT.

3. "DEPENDENTS" INCLUDES A PAYEE'S SPOUSE AND MINOR CHILDREN AND ALL OTHER FAMILY MEMBERS AND OTHER PERSONS FOR WHOM THE PAYEE IS LEGALLY OBLIGATED TO PROVIDE SUPPORT, INCLUDING ALIMONY.

4. "DISCOUNTED PRESENT VALUE" MEANS THE FAIR PRESENT VALUE OF FUTURE PAYMENTS, AS 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.

5. "INDEPENDENT PROFESSIONAL ADVICE" MEANS THE ADVICE OF AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, ACTUARY OR OTHER LICENSED PROFESSIONAL ADVISER:

(a) WHO IS ENGAGED BY A PAYEE TO RENDER ADVICE CONCERNING THE LEGAL, TAX AND FINANCIAL IMPLICATIONS OF A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(b) WHO IS NOT IN ANY MANNER AFFILIATED WITH OR COMPENSATED BY THE TRANSFEREE OF THE TRANSFER.

(c) WHOSE COMPENSATION FOR RENDERING THE ADVICE IS NOT AFFECTED BY WHETHER A TRANSFER OCCURS OR DOES NOT OCCUR.

6. "INTERESTED PARTIES" MEANS, WITH RESPECT TO ANY STRUCTURED SETTLEMENT, THE PAYEE, ANY BENEFICIARY 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 THE STRUCTURED SETTLEMENT.

7. "PAYEE" MEANS AN INDIVIDUAL WHO RECEIVES TAX-FREE DAMAGE PAYMENTS UNDER A STRUCTURED SETTLEMENT AND WHO PROPOSES TO MAKE A TRANSFER OF PAYMENT RIGHTS UNDER THE STRUCTURED SETTLEMENT.

8. "QUALIFIED ASSIGNMENT AGREEMENT" MEANS AN AGREEMENT THAT PROVIDES FOR A QUALIFIED ASSIGNMENT WITHIN THE MEANING OF SECTION 130 OF THE INTERNAL REVENUE CODE AS DEFINED BY SECTION 42-1001.

9. "RESPONSIBLE ADMINISTRATIVE AUTHORITY" MEANS, WITH RESPECT TO A STRUCTURED SETTLEMENT, ANY GOVERNMENT AUTHORITY THAT IS VESTED BY LAW WITH EXCLUSIVE JURISDICTION OVER THE SETTLED CLAIM THAT IS RESOLVED BY THE STRUCTURED SETTLEMENT.

10. "SETTLED CLAIM" MEANS THE ORIGINAL TORT CLAIM OR WORKERS' COMPENSATION CLAIM THAT IS RESOLVED BY A STRUCTURED SETTLEMENT.

11. "STRUCTURED SETTLEMENT" MEANS AN ARRANGEMENT FOR PERIODIC PAYMENT OF DAMAGES FOR PERSONAL INJURIES THAT IS ESTABLISHED BY SETTLEMENT OR JUDGMENT IN RESOLUTION OF A TORT CLAIM OR FOR PERIODIC PAYMENTS IN SETTLEMENT OF A WORKERS' COMPENSATION CLAIM.

12. "STRUCTURED SETTLEMENT AGREEMENT" MEANS THE AGREEMENT, JUDGMENT, STIPULATION OR RELEASE THAT EMBODIES THE TERMS OF A STRUCTURED SETTLEMENT, INCLUDING THE RIGHTS OF THE PAYEE TO RECEIVE PERIODIC PAYMENTS.

13. "STRUCTURED SETTLEMENT OBLIGOR" MEANS, WITH RESPECT TO ANY STRUCTURED SETTLEMENT, THE PARTY THAT HAS THE CONTINUING PERIODIC PAYMENT OBLIGATION TO THE PAYEE UNDER A STRUCTURED SETTLEMENT AGREEMENT OR A QUALIFIED ASSIGNMENT AGREEMENT.

14. "STRUCTURED SETTLEMENT PAYMENT RIGHTS" MEANS THE RIGHT TO RECEIVE PERIODIC PAYMENTS INCLUDING LUMP SUM PAYMENTS UNDER A STRUCTURED SETTLEMENT, WHETHER FROM THE SETTLEMENT OBLIGOR OR THE ANNUITY ISSUER, IF ANY OF THE FOLLOWING APPLY:

(a) THE PAYEE, THE SETTLEMENT OBLIGOR, THE ANNUITY ISSUER OR ANY OTHER INTERESTED PARTY IS DOMICILED IN THIS STATE.

(b) THE STRUCTURED SETTLEMENT AGREEMENT WAS APPROVED BY A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY IN THIS STATE.

(c) THE SETTLED CLAIM WAS PENDING BEFORE THE COURTS OF THIS STATE WHEN THE PARTIES ENTERED INTO THE STRUCTURED SETTLEMENT AGREEMENT.

15. "TRANSFER" MEANS ANY SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER FORM OF ALIENATION OR ENCUMBRANCE THAT IS MADE BY A PAYEE FOR CONSIDERATION.

16. "TRANSFER AGREEMENT" MEANS THE AGREEMENT THAT PROVIDES FOR TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS FROM A PAYEE TO A TRANSFEREE.

12-2902. Payment rights; transfer conditions

A. DIRECT OR INDIRECT TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS SHALL NOT BE EFFECTIVE AND A STRUCTURED SETTLEMENT OBLIGOR OR ANNUITY ISSUER SHALL NOT 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 OR RESPONSIBLE ADMINISTRATIVE AUTHORITY.

B. BEFORE ISSUING A FINAL ORDER PURSUANT TO SUBSECTION A, THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY SHALL EXPRESSLY FIND THAT:

1. THE TRANSFER COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER AND WILL NOT CONTRAVENE ANY OTHER APPLICABLE LAW.

2. NOT LESS THAN TEN DAYS BEFORE THE DATE ON WHICH THE PAYEE FIRST INCURRED ANY OBLIGATION WITH RESPECT TO THE TRANSFER, THE TRANSFEREE PROVIDED TO THE PAYEE A 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 THE PAYMENTS.

(c) THE DISCOUNTED PRESENT VALUE OF THE PAYMENTS, TOGETHER WITH THE DISCOUNT RATE USED IN DETERMINING THE DISCOUNTED PRESENT VALUE.

(d) THE GROSS AMOUNT THAT IS PAYABLE TO THE PAYEE IN EXCHANGE FOR THE PAYMENTS.

(e) AN ITEMIZED LISTING OF ALL BROKERS' COMMISSIONS, SERVICE CHARGES, APPLICATION FEES, PROCESSING FEES, CLOSING COSTS, FILING FEES, ADMINISTRATIVE FEES, LEGAL FEES, NOTARY FEES AND OTHER COMMISSIONS, FEES, COSTS, EXPENSES AND CHARGES THAT ARE PAYABLE BY THE PAYEE OR THAT ARE DEDUCTIBLE FROM THE GROSS AMOUNT THAT IS OTHERWISE PAYABLE TO THE PAYEE.

(f) THE NET AMOUNT THAT IS PAYABLE TO THE PAYEE AFTER DEDUCTION OF ALL COMMISSIONS, FEES, COSTS, EXPENSES AND CHARGES LISTED IN SUBDIVISION (e) OF THIS PARAGRAPH.

(g) THE QUOTIENT, EXPRESSED AS A PERCENTAGE, THAT IS OBTAINED BY DIVIDING THE NET PAYMENT AMOUNT BY THE DISCOUNTED PRESENT VALUE OF THE PAYMENTS.

(h) THE AMOUNT OF ANY PENALTY AND THE AGGREGATE AMOUNT OF ANY LIQUIDATED DAMAGES INCLUSIVE OF PENALTIES THAT ARE PAYABLE BY THE PAYEE IN THE EVENT OF ANY BREACH OF THE TRANSFER AGREEMENT BY THE PAYEE.

3. THE TRANSFER IS FAIR AND REASONABLE AND IN THE BEST INTERESTS OF THE PAYEE AND THE PAYEE'S DEPENDENTS.

4. THE PAYEE HAS RECEIVED INDEPENDENT PROFESSIONAL ADVICE REGARDING THE LEGAL, TAX AND FINANCIAL IMPLICATIONS OF THE TRANSFER.

5. IF THE TRANSFER WOULD CONTRAVENE THE TERMS OF THE STRUCTURED SETTLEMENT:

(a) THE TRANSFER HAS BEEN EXPRESSLY APPROVED IN WRITING BY ALL OF THE FOLLOWING:

(i) EACH INTERESTED PARTY, EXCEPT THAT THE APPROVAL OF THE ANNUITY ISSUER AND THE STRUCTURED SETTLEMENT OBLIGOR IS NOT REQUIRED IF ALL OTHER INTERESTED PARTIES APPROVE THE TRANSFER AND WAIVE ALL RIGHTS TO REQUIRE THAT THE TRANSFERRED PAYMENTS BE MADE TO THE PAYEE IN ACCORDANCE WITH THE TERMS OF THE STRUCTURED SETTLEMENT.

(ii) ANY COURT OR GOVERNMENT AUTHORITY, OTHER THAN THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY FROM WHICH AUTHORIZATION OF THE TRANSFER IS SOUGHT UNDER THIS CHAPTER, THAT PREVIOUSLY APPROVED THE STRUCTURED SETTLEMENT.

(b) SIGNED ORIGINALS OF ALL APPROVALS THAT ARE REQUIRED UNDER SUBDIVISION (a) OF THIS PARAGRAPH HAVE BEEN FILED WITH THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY FROM WHICH AUTHORIZATION OF THE TRANSFER IS SOUGHT UNDER THIS CHAPTER, AND ORIGINALS OR COPIES HAVE BEEN FURNISHED TO ALL INTERESTED PARTIES.

6. THE TRANSFEREE HAS GIVEN WRITTEN NOTICE OF THE TRANSFEREE'S NAME, ADDRESS AND TAXPAYER IDENTIFICATION NUMBER TO THE ANNUITY ISSUER AND THE STRUCTURED SETTLEMENT OBLIGOR AND HAS FILED A COPY OF THE NOTICE WITH THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY.

12-2903. Jurisdiction: transfer approval

A. THE SUPERIOR COURT HAS JURISDICTION OVER ANY APPLICATION FOR AUTHORIZATION TO TRANSFER STRUCTURED SETTLEMENT PAYMENT RIGHTS PURSUANT TO SECTION 12-2902.

B. NOT LESS THAN TWENTY DAYS BEFORE THE SCHEDULED HEARING ON ANY APPLICATION FOR AUTHORIZATION TO TRANSFER STRUCTURED SETTLEMENT PAYMENT RIGHTS, THE TRANSFEREE SHALL FILE WITH THE COURT A NOTICE OF THE PROPOSED TRANSFER AND THE APPLICATION FOR ITS AUTHORIZATION AND SHALL SERVE A COPY OF THE NOTICE ON ANY OTHER GOVERNMENT AUTHORITY THAT PREVIOUSLY APPROVED THE STRUCTURED SETTLEMENT, ON ALL INTERESTED PARTIES AND ON ANY KNOWN STATE OFFICIAL WHO IS VESTED WITH DISCRETIONARY AUTHORITY TO BE HEARD IN PROCEEDINGS UNDER THIS CHAPTER. THE NOTICE SHALL INCLUDE:

1. A COPY OF THE TRANSFEREE'S APPLICATION.

2. A COPY OF THE TRANSFER AGREEMENT.

3. A COPY OF THE DISCLOSURE STATEMENT REQUIRED UNDER SECTION 12-2902.

4. A STATEMENT 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 OTHER RESPONSIBLE ADMINISTRATIVE AUTHORITY OR BY PARTICIPATING IN THE HEARING.

5. THE TIME AND PLACE OF THE HEARING AND THE MANNER IN WHICH AND THE TIME BY WHICH WRITTEN RESPONSES TO THE APPLICATION MUST BE FILED IN ORDER TO BE CONSIDERED BY THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY. AN INTERESTED PARTY SHALL HAVE AT LEAST FIFTEEN DAYS AFTER SERVICE OF THE TRANSFEREE'S NOTICE IN WHICH TO RESPOND.

C. ALL PARTIES LISTED IN SUBSECTION B OF THIS SECTION HAVE STANDING TO RAISE, APPEAR AND BE HEARD ON ANY MATTER RELATING TO AN APPLICATION FOR AUTHORIZATION TO TRANSFER STRUCTURED SETTLEMENT PAYMENT RIGHTS UNDER THIS CHAPTER.

12-2904. Waiver; penalties

A. THE PROVISIONS OF THIS CHAPTER SHALL NOT BE WAIVED.

B. A PAYEE WHO PROPOSES TO MAKE A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS SHALL NOT INURE ANY PENALTY, FORFEIT ANY APPLICATION FEE OR OTHER PAYMENT OR OTHERWISE INCUR ANY LIABILITY TO THE PROPOSED TRANSFEREE BASED ON ANY FAILURE OF THE TRANSFER TO SATISFY THE CONDITIONS SPECIFIED IN SECTION 12-2902.

Sec. 2. Construction

Title 12, chapter 20, Arizona Revised Statutes, as added by this act, shall not be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law.

Sec. 3. Applicability

Title 12, chapter 20, Arizona Revised Statutes, as added by this act, applies to any transfer of structured settlement payment rights under a transfer agreement that is entered into on or after the effective date of this act, except that this act shall not imply that any transfer under a transfer agreement that is reached before the effective date of this act is effective.