

CHAPTER 24-A

PROTECTION OF BENEFICIARIES OF STRUCTURED SETTLEMENTS

§2241. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 268, §2 (NEW).]

1. Annuity issuer. "Annuity issuer" means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement.
[PL 1999, c. 268, §2 (NEW).]

2. Applicable law. "Applicable law" means:

A. Federal law; [PL 1999, c. 268, §2 (NEW).]

B. The laws of this State, including principles of equity applied in the courts of this State; and [PL 1999, c. 268, §2 (NEW).]

C. The laws of any other jurisdiction:

(1) That is the domicile of the payee or any other interested party;

(2) Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

(3) In whose courts a settled claim was pending when the parties entered into a structured settlement agreement. [PL 1999, c. 268, §2 (NEW).]

[PL 1999, c. 268, §2 (NEW).]

3. Dependents. "Dependents" means 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.

[PL 1999, c. 268, §2 (NEW).]

4. Discounted present value. "Discounted present value" means the fair present value of future payments as determined by discounting such payments to the present using the applicable federal rate for determining the present value of an annuity most recently published by the United States Internal Revenue Service.

[PL 1999, c. 268, §2 (NEW).]

5. Favorable tax determination. "Favorable tax determination," with respect to a proposed transfer of structured settlement payment rights, means any of the following authorities that definitively establishes that the federal income tax treatment of the structured settlement for the parties, other than the payee, to the structured settlement agreement and any qualified assignment agreement will not be affected by that transfer:

A. A provision of the United States Internal Revenue Code or a United States Treasury regulation adopted pursuant to the code; [PL 1999, c. 268, §2 (NEW).]

B. A revenue ruling or revenue procedure issued by the United States Internal Revenue Service; [PL 1999, c. 268, §2 (NEW).]

C. A private letter ruling by the United States Internal Revenue Service with respect to that transfer; or [PL 1999, c. 268, §2 (NEW).]

D. A decision by the United States Supreme Court or a decision of a lower federal court in which the United States Internal Revenue Service has acquiesced. [PL 1999, c. 268, §2 (NEW).]

[PL 1999, c. 268, §2 (NEW).]

6. Federal hardship standard. "Federal hardship standard" means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payee's needs, as contained in the United States Internal Revenue Code or in a United States Treasury regulation adopted pursuant to the code.

[PL 1999, c. 268, §2 (NEW).]

7. Independent professional advice. "Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional advisor:

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; [PL 1999, c. 268, §2 (NEW).]

B. Who is not in any manner affiliated with or compensated by the transferee of that transfer; and [PL 1999, c. 268, §2 (NEW).]

C. Whose compensation for rendering advice is not affected by whether a transfer occurs or does not occur. [PL 1999, c. 268, §2 (NEW).]

[PL 1999, c. 268, §2 (NEW).]

8. Interested parties. "Interested parties" means the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death and any other party that has continuing rights or obligations under the contract. For purposes of this chapter, "interested parties" does not include the structured settlement obligor or the annuity issuer.

[PL 1999, c. 268, §2 (NEW).]

9. Payee. "Payee" means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights under that settlement.

[PL 1999, c. 268, §2 (NEW).]

10. Qualified assignment agreement. "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.

[PL 1999, c. 268, §2 (NEW).]

11. Responsible administrative authority. "Responsible administrative authority" means any government authority vested by law with exclusive jurisdiction over the settled claim resolved by a structured settlement.

[PL 1999, c. 268, §2 (NEW).]

12. Settled claim. "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.

[PL 1999, c. 268, §2 (NEW).]

13. Structured settlement. "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

[PL 1999, c. 268, §2 (NEW).]

14. Structured settlement agreement. "Structured settlement agreement" means the agreement, judgment, stipulation or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments.

[PL 1999, c. 268, §2 (NEW).]

15. Structured settlement obligor. "Structured settlement obligor" means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

[PL 1999, c. 268, §2 (NEW).]

16. Structured settlement payment rights. "Structured settlement payment rights" means rights to receive periodic payments, including lump sum payments, under a structured settlement, whether from the settlement obligor or the annuity issuer, when:

- A. The payee, structured settlement obligor, annuity issuer or any other interested party is domiciled in this State; [PL 1999, c. 268, §2 (NEW).]
- B. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or [PL 1999, c. 268, §2 (NEW).]
- C. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement. [PL 1999, c. 268, §2 (NEW).]
[PL 1999, c. 268, §2 (NEW).]

17. Terms of structured settlement. "Terms of a structured settlement" means the terms of a structured settlement agreement, an annuity contract, any qualified assignment agreement and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving the structured settlement.
[PL 1999, c. 268, §2 (NEW).]

18. Transfer. "Transfer" means any sale, assignment, pledge, hypothecation or other form of alienation or encumbrance made by a payee for consideration.
[PL 1999, c. 268, §2 (NEW).]

19. Transfer agreement. "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.
[PL 1999, c. 268, §2 (NEW).]

20. Transferee. "Transferee" means a person that becomes entitled to receive structured settlement payment rights as a result of a transfer agreement.
[PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

§2242. Notice and registration requirements of transferees of structured settlements

1. Notice. A transferee of structured settlement payment rights that intends to do business in this State shall, prior to doing business, pay the appropriate fee at the rate established in section 601 and furnish notice to the superintendent to:

- A. Identify the state in which the transferee is domiciled; [PL 1999, c. 268, §2 (NEW).]
- B. Identify the principal place of business of the group; and [PL 1999, c. 268, §2 (NEW).]
- C. Provide such other information as may be required by the superintendent. [PL 1999, c. 268, §2 (NEW).]
[PL 1999, c. 268, §2 (NEW).]

2. Registration. The transferee shall register with the superintendent and designate an agent solely for the purpose of receiving service of legal documents or process.
[PL 1999, c. 268, §2 (NEW).]

3. Application of law. Any transferee that was doing business in this State prior to the effective date of this chapter within 30 days after the effective date of this chapter shall furnish notice to the superintendent pursuant to the requirements of subsection 1 and shall comply with the requirements of subsection 2.
[PL 1999, c. 268, §2 (NEW).]

4. Notice of change. A transferee that intends to do business or is doing business in this State shall notify the superintendent within 10 days of any subsequent changes in any information or other items provided pursuant to this section.

[PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

§2243. Transfer of structured settlement payment rights

1. Application. This section applies to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the effective date of this section. This section may not be construed to imply that any transfer under a transfer agreement reached prior to the effective date of this section is effective.

[PL 1999, c. 268, §2 (NEW).]

2. Requirements for transfer. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not 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 a responsible administrative authority, based on express findings by that court or responsible administrative authority that:

A. The transfer complies with the requirements of this chapter and does not contravene other applicable law; [PL 1999, c. 268, §2 (NEW).]

B. Not less than 10 days prior to 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 14 points, setting forth:

- (1) The amounts and due dates of the structured settlement payments to be transferred;
- (2) The aggregate amount of those payments;
- (3) The discounted present value of those payments together with the discount rate used in determining that discounted present value;
- (4) The gross amount payable to the payee in exchange for the payments;
- (5) 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 payable by the payee or deductible from the gross amount otherwise payable to the payee;
- (6) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subparagraph (5);
- (7) The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and
- (8) The amount of any penalty and the aggregate amount of any liquidated damages, inclusive of penalties, payable by the payee in the event of any breach of the transfer agreement by the payee; [PL 1999, c. 268, §2 (NEW).]

C. The payee has established that the transfer is necessary to enable the payee, the payee's dependents or both to avoid imminent financial hardship, and the transfer is not expected to subject the payee, the payee's dependents or both to undue financial hardship in the future, except that if a federal hardship standard was in effect at the time the payee and the transferee entered into the transfer agreement, in lieu of the foregoing finding the court or responsible administrative authority

must make an express finding that the transfer qualifies under that federal hardship standard; [PL 1999, c. 268, §2 (NEW).]

D. The payee has received independent professional advice regarding the legal, tax and financial implications of the transfer; [PL 1999, c. 268, §2 (NEW).]

E. If the transfer would contravene the terms of the structured settlement:

(1) The transfer has been expressly approved in writing by:

(a) Each interested party; and

(b) 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; and

(2) Signed originals of all approvals required under subparagraph (1) 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; [PL 1999, c. 268, §2 (NEW).]

F. If the transfer would contravene the terms of the structured settlement, the transfer agreement does not have adverse tax consequences to the structured settlement obligor or annuity issuer. The structured settlement obligor or annuity issuer must demonstrate to the court or responsible administrative authority that the transfer agreement, if approved, will have adverse tax consequences; and [PL 1999, c. 268, §2 (NEW).]

G. 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 that notice with the court or responsible administrative authority. [PL 1999, c. 268, §2 (NEW).]

[PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

§2244. Jurisdiction; filing

1. Jurisdiction. The Superior Court has nonexclusive jurisdiction over any application for authorization under this chapter of a transfer of structured settlement payment rights. [PL 1999, c. 268, §2 (NEW).]

2. Filing. Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this chapter, the transferee shall file with the court or responsible administrative authority and serve on any other government authority that previously approved the structured settlement, all interested parties, the structured settlement obligor and annuity issuer a notice of the proposed transfer and the application of its authorization, including in that notice:

A. A copy of the transferee's application; [PL 1999, c. 268, §2 (NEW).]

B. A copy of the transfer agreement; [PL 1999, c. 268, §2 (NEW).]

C. A copy of the disclosure statement required under section 2243, subsection 2, paragraph B; [PL 1999, c. 268, §2 (NEW).]

D. Notification that any interested party, structured settlement obligor or annuity issuer 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 [PL 1999, c. 268, §2 (NEW).]

E. 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 may be not less than 30 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority. [PL 1999, c. 268, §2 (NEW).]

[PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

§2245. Prohibitions

1. Prohibition against waiver. The provisions of this chapter may not be waived.
[PL 1999, c. 268, §2 (NEW).]

2. Prohibition against penalty. A payee who proposes to make a transfer of structured settlement payment rights may not incur a penalty, forfeit an application fee or other payment or otherwise incur any liability to the proposed transferee based on the failure of that transfer to satisfy the conditions of section 2243.

[PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

§2246. Construction

Nothing contained in this chapter may be construed to authorize a transfer of structured settlement payment rights in contravention of applicable law or to give effect to a transfer of structured settlement payment rights that is invalid under applicable law. [PL 1999, c. 268, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 268, §2 (NEW).

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