

Montana Code Annotated
TITLE 33 INSURANCE AND INSURANCE COMPANIES
CHAPTER 20 LIFE INSURANCE
PART 14 STRUCTURED SETTLEMENT PROTECTION

Mont. Code Anno., § 33-20-1402 (2005)

33-20-1402 Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Consideration" has the meaning provided in 28-2-801.

(3) "Dependent" means a payee's spouse, a minor child of the payee, or any person for whom the payee is legally obligated to provide support, including spousal maintenance.

(4) "Discounted present value" means the present value of future payments determined by discounting the future 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) "Gross advance amount" means the sum payable to the payee or to the payee's account as consideration for a transfer of a structured settlement payment right before any reduction for a transfer expense or any other deduction is made from the sum.

(6) "Independent professional advice" means advice of an attorney, a certified public accountant, an actuary, or any licensed professional adviser.

(7) "Interested party" means, with respect to a structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive a payment after the payee's death, the annuity issuer, the structured settlement obligor, or any other party that has a continuing right or obligation under the structured settlement.

(8) "Net advance amount" means the gross advance amount minus the aggregate amount of the actual and estimated transfer expenses required to be disclosed under 33-20-1403(5).

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

(10) "Periodic payment" includes both a recurring payment and any scheduled future lump-sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment, as defined for federal tax purposes, of the liability to make periodic payments under a structured settlement.

(12) "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.

(13) "Settled claim" means the original tort claim.

(14) "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.

(15) "Structured settlement agreement" means the written agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(16) "Structured settlement obligor" means, with respect to a 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.

(17) "Structured settlement payment right" means the right to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, when:

- (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) a court or responsible administrative authority in this state approved the structured settlement agreement; or
- (c) the structured settlement agreement is expressly governed by the laws of this state.

(18) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, or any order or other approval of a court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

(19) (a) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of a structured settlement payment right made by a payee for consideration.

(b) The term does not include the creation or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution in the absence of any action:

- (i) to redirect the structured settlement payment to the insured depository institution or its agent or successor in interest; or
- (ii) to otherwise enforce the blanket security interest against the structured settlement payment right.

(20) "Transfer agreement" means the agreement providing for a transfer of a structured settlement payment right.

(21) (a) "Transfer expenses" means all expenses of a transfer that are:

- (i) required under the transfer agreement to be paid by the payee; or
- (ii) deducted from the gross advance amount, including without limitation any court filing fee, attorney fee, escrow fee, lien recordation fee, judgment and lien search fee, finder's fee, commission, and other payments to a broker or other intermediary.

(b) Transfer expenses do not include a payee's preexisting obligations that are payable on the payee's account from the proceeds of a transfer.

(22) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right through a transfer.

HISTORY: En. Sec. 2, Ch. 351, L. 2005.

NOTES:

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Applicability: Section 13, Ch. 351, L. 2005, provided: " This act applies to any transfer of structured settlement payment rights under a transfer agreement executed on or after October 1, 2005."

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Mont. Code Anno., § 33-20-1403 (2005)

33-20-1403 Disclosure to payee.

No less than 3 days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a written disclosure statement separate from the transfer agreement that sets forth in bold type no smaller than 14 points:

- (1) the amounts and the due dates of the structured settlement payment to be transferred;
- (2) the aggregate amount of the amounts in subsection (1);
- (3) the discounted present value of the payments to be transferred, which must be identified as:
 - (a) the calculation of the present value of the transferred structured settlement payment under federal standards for valuing annuities; and
 - (b) the amount of the applicable federal rate used in calculating the discounted present value;
- (4) the gross advance amount;
- (5) an itemized list of all applicable transfer expenses, other than attorney fees and related disbursements, based on the transferee's best estimate of the amount of fees and disbursements payable in connection with the transferee's application for approval of the transfer;
- (6) the net advance amount;
- (7) the amount of any penalty or liquidated damages payable by the payee in the event of a 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 no later than the third business day after the date on which the payee signs the agreement.

HISTORY: En. Sec. 3, Ch. 351, L. 2005.

NOTES:

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Mont. Code Anno., § 33-20-1404 (2005)

33-20-1404 Transfer of structured settlement payment right -- conditions.

A direct or indirect transfer of a structured settlement payment right is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of a structured settlement payment right unless a final court order or order of a responsible administrative authority has approved the transfer in advance based on written findings by the court or responsible administrative authority that:

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

HISTORY: En. Sec. 4, Ch. 351, L. 2005.

NOTES:

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