

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

Current through End of 2001 Reg. Sess.

§ 141.001. Short Title

This chapter may be cited as the **Structured Settlement** Protection Act.

CREDIT(S)

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2001 Legislation

Section 3 of Acts 2001, 77th Leg., ch. 96 provides:

"This Act takes effect September 1, 2001, and applies only to a transfer of **structured settlement** payment rights under a transfer agreement entered into on or after that date."

V. T. C. A., Civil Practice & Remedies Code § 141.001

TX CIV PRAC & REM § 141.001

END OF DOCUMENT

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CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.002. Definitions

In this chapter:

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

(2) "Court" means:

(A) the court of original jurisdiction that authorized or approved a **structured settlement**; or

(B) if the court that authorized or approved the **structured settlement** no longer has jurisdiction to approve a transfer of payment rights under the **structured settlement** under this chapter, a statutory county court or a district court located in the county in which the payee resides.

(3) "Dependents" includes a payee's spouse, minor children, and all other persons for whom the payee is legally obligated to provide support, including alimony.

(4) "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.

(5) "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.

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

(7) "Interested party" 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**.

(8) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 141.003(5).

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

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

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130), as amended.

(12) "Settled claim" means the original tort claim or workers' compensation 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 or for periodic payments in settlement of a workers' compensation 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) 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;

(B) the **structured settlement** agreement was authorized or approved by a court located 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 the **structured settlement** agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of the court.

(18) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of **structured settlement** payment rights made by a payee for consideration, except that the term 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 the insured depository institution, or its agent or successor in interest, or to enforce the 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) "Transfer expenses" means all the 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 court filing fees, attorney's fees, escrow fees, lien recording fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary, except that the term does 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.

CREDIT(S)

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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Section 3 of Acts 2001, 77th Leg., ch. 96 provides:

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V. T. C. A., Civil Practice & Remedies Code § 141.002

TX CIV PRAC & REM § 141.002

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VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.003. Required Disclosures to Payee

At least three days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type at least 14 points in size, that states:

- (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's 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 those expenses;
- (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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V. T. C. A., Civil Practice & Remedies Code § 141.003

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END OF DOCUMENT

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.004. 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 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 the advice or knowingly waived the advice in writing; and
- (3) the transfer does not contravene any applicable statute or an order of any court or other governmental authority.

CREDIT(S)

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

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V. T. C. A., Civil Practice & Remedies Code § 141.004

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END OF DOCUMENT

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
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CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.005. 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's 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 chapter;

(3) the transferee shall be liable to the payee:

(A) if the transfer contravenes the terms of the **structured settlement**, for any taxes incurred by the payee as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising as a consequence of the transferee's failure to comply with this chapter;

(4) neither the **structured settlement** obligor nor the annuity issuer 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

(5) any further transfer of **structured settlement** payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

CREDIT(S)

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

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V. T. C. A., Civil Practice & Remedies Code § 141.005

TX CIV PRAC & REM § 141.005

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CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.006. Procedure for Approval of Transfers

(a) An application under this chapter for approval of a transfer of **structured settlement** payment rights shall be made by the transferee and shall be brought in the court.

(b) At least 20 days before the date of the scheduled hearing on any application for approval of a transfer of **structured settlement** payment rights under Section 141.004, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for authorization, including with the notice:

(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 141.003;

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

(5) notice 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 by participating in the hearing; and

(6) notice 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 to be considered by the court.

(c) Written responses to the application under Subsection (b)(6) must be filed on or after the 15th day after the date the transferee's notice is served.

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END OF DOCUMENT

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 141. STRUCTURED SETTLEMENT PROTECTION ACT

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§ 141.007. General Provisions; Construction

(a) The provisions of this chapter may not be waived by any payee.

(b) Any transfer agreement entered into by a payee who resides in this state must 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. The transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) Transfer of **structured settlement** payment rights may not 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 agreed to maintain procedures reasonably satisfactory to the **structured settlement** obligor and the annuity issuer for:

(1) periodically confirming the payee's survival; and

(2) giving the **structured settlement** obligor and the annuity issuer prompt written notice in the event of the payee's death.

(d) A payee who proposes to make a transfer of **structured settlement** payment rights may not 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 the transfer to satisfy the conditions of this chapter.

(e) Nothing contained in this chapter may 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 the effective date of this chapter is valid or invalid.

(f) Compliance with the requirements in Section 141.003 and fulfillment of the conditions in Section 141.004 are solely the responsibility of the transferee in any transfer of **structured settlement** payment rights, and neither the **structured settlement** obligor nor the annuity issuer bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

CREDIT(S)

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V. T. C. A., Civil Practice & Remedies Code § 141.007

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