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Delaware State Structured Settlement Protection Act

In the state of Delaware the law provides that the customer lives in the state, and must be approved by local court in state. Approval granted only if the transaction is fair and reasonable, and in the customers best interest. In addition, a customer must seek independent financial advice to protect their interests. There also exists a 10 day waiting period to protect the customer.

§ 6601. Conditions to 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 or responsible administrative authority, based on express findings by such court or responsible administrative authority that:

- (1) the transfer complies with the requirements of this chapter and will not contravene other applicable law;
- (2) not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 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 such payments, together with the discount rate used in determining such discounted present value;
 - d. the gross amount payable to the payee in exchange for such 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 payable by the payee or deductible from the gross amount otherwise payable to the payee;
 - f. the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subparagraph e. of this paragraph;
 - g. the quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and
 - h. 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;
- (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:

1. Each interested party; provided, however, that the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this chapter, which previously approved the structured settlement; and

b. Signed originals of all approvals required under subparagraph 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; and

(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 such notice with the court or responsible administrative authority. (72 Del. Laws, c. 303, § 1.)

§ 6602. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

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

(b) "Applicable law" shall mean:

(1) The federal laws of the United States;

(2) The laws of this State, including principles of equity applied in the courts of this State; and

(3) The laws of any other jurisdiction:

a. Which is the domicile of the payee or any other interested party;

b. Under whose laws a structured settlement agreement was approved by a court; or

c. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(c) "Dependents" shall include 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;

(d) "Discounted present value" shall mean the fair 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;

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

(1) A provision of the United States Internal Revenue Code, United States Code Title 26 [26 U.S.C. § 130], as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

(2) A revenue ruling or revenue procedure issued by the United States Internal Revenue Service;

(3) A private letter ruling by the United States Internal Revenue Service with respect to such transfer;

(4) A decision of the United States Supreme Court or a decision of a lower federal court in which the United States Internal Revenue Service has acquiesced;

(f) "Federal hardship standard" shall mean a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the United States Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(g) "Independent professional advice" shall mean the advice of an attorney, certified public accountant, actuary or other licensed professional adviser:

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

(2) Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

(3) Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur.

(h) "Interested parties" shall mean, 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 such structured settlement;

(i) "Payee" shall mean an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(j) "Qualified assignment agreement" shall mean an agreement providing for a qualified assignment within the meaning of § 130 of the United States Internal Revenue Code, United States Code Title 26 (26 U.S.C. § 130), as amended from time to time;

(k) "Responsible administrative authority" shall mean, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) "Settled claim" shall mean the original tort claim or workers' compensation claim resolved by a structured settlement;

(m) "Structured settlement" shall mean 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;

(n) "Structured settlement agreement" shall mean the agreement, judgment, stipulation or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(o) "Structured settlement obligor" shall mean, 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;

(p) "Structured settlement payment rights" shall mean rights to receive periodic payments (including lump sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(1) The payee, the settlement obligor, the annuity issuer, or any other interested party is domiciled in this State;

(2) The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(3) The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(q) "Terms of the structured settlement" shall 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 or responsible administrative authority or other government authority authorizing or approving such structured settlement;

(r) "Transfer" shall mean any sale, assignment, pledge, hypothecation or other form of alienation or encumbrance made by a payee for consideration;

(s) "Transfer agreement" shall mean the agreement providing for transfer of structured settlement payment rights from a payee to a transferee; and

(t) "Transferee" or "payor" shall mean the person, firm or entity purchasing or receiving the assignment, pledge, hypothecation or other form of alienation or encumbrance made by a payee for consideration under a structured settlement agreement. (72 Del. Laws, c. 303, § 1; 75 Del. Laws, c. 148, § 1.)

§ 6603. Jurisdiction; procedure for approval of transfers.

(a) The Superior Court shall have non-exclusive jurisdiction over any application for authorization, under § 6601 of this title, of a transfer of structured settlement payment rights, except that if the structured settlement payment rights are held by a trustee, the Court of Chancery shall have exclusive jurisdiction over any application for authorization of a transfer of such rights.

(b) Not less than 20 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under § 6601 of this title, the transferee shall file with the court and serve on any other government authority which previously approved the structured settlement and on all

interested parties a notice of the proposed transfer and application of its authorization, including in such 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 § 6601(b) of this title;

(4) Notification 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 responsible administrative authority or by participating in the hearing; and

(5) 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 shall be not less than 15 days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

(c) Those parties, persons and officials named in § 6603(b) of this title shall have standing to raise, appear and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this chapter.

(d) In cases where the payee shall not be represented by counsel, or where the payee and the transferee shall be represented by the same counsel, and the court, in the exercise of its reasonable discretion, finds that the payee does not adequately comprehend the substance of the transaction, the court may appoint an attorney ad litem who shall advise the court if, in their opinion, the requirements of § 6601 of this title have been met. The costs and fees incurred by such attorney ad litem shall be borne by the payor or transferee and shall not be passed on to the payee or deducted from the payee's structured settlement agreement proceeds, provided that such costs do not exceed \$500. (72 Del. Laws, c. 303, § 1; 75 Del. Laws, c. 148, §§ 2, 3; 75 Del. Laws, c. 301, § 4.)

§ 6604. No waiver; no penalties.

(a) The provisions of this chapter shall not be waived.

(b) 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 based on any failure of such transfer to satisfy the conditions of § 6601 of this title. (72 Del. Laws, c. 303, § 1.)