

ARIZONA REVISED STATUTES ANNOTATED
TITLE 12. COURTS AND CIVIL PROCEEDINGS
CHAPTER 20

Current through End of the Forty-Fifth Legislature,
Second Regular and Fifth Special Sessions (2002)

GENERAL NOTES

<Chapter 20, **Structured Settlements**, consisting of Article 1, General Provisions, § § 12-2901 to 12-2903, was added by Laws 2002, Ch. 239, § 1, effective August 22, 2002.>

HISTORICAL AND STATUTORY NOTES

Laws 2002, Ch. 239, § 2, provides:

"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."

A. R. S. T. 12, Ch. 20, Refs & Annos

AZ ST T. 12, Ch. 20, Refs & Annos

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CHAPTER 20
ARTICLE 1. GENERAL PROVISIONS

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§ 12-2901. Definitions

In this chapter, unless the context otherwise requires:

1. "Annuity issuer" means an insurer that has issued a contract that is used to fund periodic payments under a **structured settlement**.
2. "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.
3. "Discounted present value" means the 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.
4. "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.
5. "Independent professional advice" means the advice of an attorney, certified public accountant, actuary or other licensed professional adviser.
6. "Interested parties" means, with respect to any **structured settlement**, the payee, any beneficiary irrevocably 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. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under this chapter.
8. "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**.
9. "Periodic payments" includes both recurring payments and scheduled future lump sum payments.
10. "Qualified assignment agreement" means an agreement that provides for a qualified assignment within the meaning of § 130 of the Internal Revenue Code as defined by § 42-1001.
11. "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**.
12. "Settled claim" means the original tort claim or workers' compensation claim that is resolved by a **structured settlement**.

13. "**Structured settlement**" means an arrangement for periodic payment of damages for personal injuries or sickness that is 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 that embodies the terms of a **structured settlement**.

15. "**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.

16. "**Structured settlement payment rights**" means the right to receive periodic payments under a **structured settlement**, whether from the settlement obligor or the annuity issuer, if any of the following apply:

(a) The payee, the **structured 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 laws of this state expressly govern the **structured settlement agreement**.

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 any court or responsible administrative authority or other government authority that authorized or approved the **structured settlement**.

18. "Transfer" means any sale, assignment, pledge, hypothecation or other form of alienation or encumbrance of **structured settlement payment rights**. Transfer 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 such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce the blanket security interest against the **structured settlement payment rights**.

19. "Transfer agreement" means the agreement that provides for transfer of **structured settlement payment rights** from a payee to a transferee.

20. "Transfer expenses" means all expenses of a transfer required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions and other payments to a broker or other intermediary. Transfer expenses 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)

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

HISTORICAL NOTES

Laws 2002, Ch. 239, § 2, provides:

"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."

A. R. S. § 12-2901

AZ ST § 12-2901

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§ 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 three days before the date on which the payee signed the transfer agreement, 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 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.
 - (d) The gross advance amount that is payable to the payee in exchange for the payments.
 - (e) An itemized listing of all applicable transfer expenses, other than attorney 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 attorney fees and related disbursements.
 - (f) The net advance 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) 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.
 - (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 in the best interest of the payee, taking into account the welfare and support of the payee's dependents.
4. 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.

5. If the transfer would contravene any applicable statute or the order of any court or other government authority.

C. 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 such parties as a consequence of the transfer.

(b) For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this act.

CREDIT(S)

Added by Laws 2002, Ch. 239, § 1.

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

HISTORICAL AND STATUTORY NOTES

Laws 2002, Ch. 239, § 3, provides:

"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."

A. R. S. § 12-2902

AZ ST § 12-2902

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§ 12-2903. Jurisdiction: transfer approval

A. The superior court has jurisdiction over any application for authorization to transfer **structured settlement** payment rights pursuant to § 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. 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 § 12-2902.
4. A listing of each of the payee's dependents, together with each dependent's age.
5. 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.
6. 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.

CREDIT(S)

Added by Laws 2002, Ch. 239, § 1.

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

A. R. S. § 12-2903

AZ ST § 12-2903

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§ 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 § 12-2902.

C. Any transfer agreement entered into on or after the effective date of this section by a payee who resides in this state shall 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. A transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

D. A transfer of **structured settlement** payment rights shall not extend to any payments that are life contingent unless, before the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the **structured settlement** obligor for both of the following:

1. Periodically confirming the payee's survival.
2. Giving the annuity issuer and the **structured settlement** obligor prompt written notice if the payee dies.

E. Compliance with the requirements and fulfillment of the conditions set forth in this chapter is the sole responsibility of the transferee in any transfer of **structured settlement** payment rights, and the **structured settlement** obligor or the annuity issuer is not responsible for, or any liability arising from, noncompliance with the requirements or failure to fulfill the requirements of this chapter.

CREDIT(S)

Added by Laws 2002, Ch. 239, § 1.

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

HISTORICAL AND STATUTORY NOTES

Reviser's Notes:

2002 Note. Pursuant to authority of § 41-1304.02, in subsection C "section" was substituted for "act" and in subsection E the spelling of "noncompliance" was corrected.

A. R. S. § 12-2904

AZ ST § 12-2904

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