

CODE OF GEORGIA
TITLE 51. TORTS
CHAPTER 12. DAMAGES
ARTICLE 4. DAMAGES IN TORT ACTIONS

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Statutes current through 2002 Regular Session of the General Assembly

51-12-70 Definitions.

As used in this article, the term:

(1) "Administrator" means the administrator of the "Fair Business Practices Act of 1975" appointed pursuant to subsection (a) of Code Section 10-1-395 or his or her designee.

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

(3) "Applicable law" means:

(A) The federal laws of the United States;

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

(C) The laws of any other jurisdiction:

(i) Which is the domicile of the payee or any other interested party;

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

(iii) In whose courts a settled claim was pending when the parties entered into a **structured settlement** agreement.

(4) "Discounted present value" means 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.

(5) "Interested parties" means, with respect to any **structured settlement** agreement, 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**.

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

(7) "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.

(8) "Settled claim" means the original tort claim or workers' compensation claim resolved by a **structured settlement**.

(9) "**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.

(10) "**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.

(11) "**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.

(12) "**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, where:

(A) The payee 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; or

(C) The settled claim was pending before the courts of this state when the parties entered into the **structured settlement** agreement.

(13) "Terms of the **structured settlement**" includes, 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**.

(14) "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration, but does not include:

(A) Any transaction which is expressly provided for in the **structured settlement** agreement and is executed within 30 days after execution of the **structured settlement** agreement; or

(B) Any testamentary disposition by the payee.

(15) "Transfer agreement" means the agreement providing for the transfer of **structured settlement** payment rights from a payee to a transferee.

(Code 1981, § 51-12-70, enacted by Ga. L. 1999, p. 853, § 1.)

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

NOTES, REFERENCES, AND ANNOTATIONS

Code commission notes. -- Pursuant to Code Section 28-9-5, in 1999, clauses (A) and (B) of paragraph (14) were set out as subparagraphs and

capitalization was revised in both subparagraphs.

Law reviews. -- For note on 1999 enactment of this article, see 16 Ga. St. U.L. Rev. 277 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. -- 15A Am. Jur. 2d, Compromise and Settlement, § 1 et seq.

C.J.S. -- 15A C.J.S., Compromise and Settlement, § 1 et seq.

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51-12-71 Prerequisites for transfer 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:

(1) The transfer complies with the requirements of this article and will not contravene other applicable law;

(2) Not less than ten days prior to the date on which the transfer agreement is executed in writing, the transferee has provided to the payee an informational pamphlet relating to transfers of **structured settlements** as provided for in subsection (b) of Code Section 51-12-73, when available, and a separate 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) Written notice at least two business days prior to the effective execution of the transfer agreement has been provided by the transferee to the annuity issuer and the **structured settlement** obligor by certified mail or statutory overnight delivery, postage prepaid; and

(4) 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.

(Code 1981, § 51-12-71, enacted by Ga. L. 1999, p. 853, § 1; Ga. L. 2000, p. 1589, § 3.)

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

NOTES, REFERENCES, AND ANNOTATIONS

The 2000 amendment, effective July 1, 2000, and applicable with respect to notices delivered on or after July 1, 2000, substituted "certified mail or statutory overnight delivery" for "certified mail" in paragraph (3).

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51-12-72 Written transfer agreement required.

(a) Any transfer agreement of **structured settlement** payment rights must, in addition to the other requirements of this article, be executed in writing. The transfer agreement shall not be so executed until after the expiration of the ten-day period provided for in paragraph (2) of Code Section 51-12-71.

(b) No payee shall incur any obligation of any type with respect to a proposed transfer of **structured settlement** payment rights prior to the execution in writing of the transfer agreement.

(c) Any payee who executes in writing a transfer agreement shall have the right to rescind the transfer at any time within the next 21 days following the written execution of the transfer agreement. The transferee shall furnish to the payee at the time of execution of the transfer agreement a notice to the payee allowing the payee 21 days to cancel the transfer. This right to cancel shall not limit or otherwise affect the payee's right to cancel pursuant to any other provision of applicable law. The notice shall serve as the cover sheet to the transfer documents. It shall be on a separate sheet of paper with no other written or pictorial material, in at least ten-point bold type, double spaced, and shall read substantially as follows:

"NOTICE OF CANCELLATION RIGHTS:

Please read this form completely and carefully. It contains valuable cancellation rights.

You may cancel this transaction at any time prior to 5:00 P.M. of the twenty-first day following receipt of this notice.

This cancellation right cannot be waived in any manner.

To cancel, sign this form, and mail or deliver it to the address below by 5:00 P.M. of _____ (the twenty-first day following the transaction). It is best to mail it by certified mail or statutory overnight delivery, return receipt requested, and to keep a photocopy of the signed form and your post office receipt.

Address to which cancellation is to be returned:

I (we) hereby cancel this transaction.

Payee's Signature

Date:

(Code 1981, § 51-12-72, enacted by Ga. L. 1999, p. 853, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 4, § 51.)

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

NOTES, REFERENCES, AND ANNOTATIONS

The 2000 amendment, effective July 1, 2000, and applicable with respect to notices delivered on or after July 1, 2000, substituted "certified mail or statutory overnight delivery" for "certified mail" in the form in subsection (c).

The 2001 amendment, effective February 12, 2001, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

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51-12-73 (For effective date, see note) Powers and duties of the administrator

(a) The administrator is authorized to promulgate, adopt, and issue rules, regulations, and orders necessary or convenient to carry out the provisions and purposes of this article. Any such rules of a substantive nature shall be promulgated only when it is determined by the administrator, in the reasonable exercise of his or her discretion and on the basis of his or her expertise and the facts, submissions, evidence, and all information before him or her, that such rules are needed to prohibit or control acts or practices which create the probability of actual injury to payees.

(b) The administrator shall prepare a pamphlet containing information designed to help payees evaluate proposed transfers of **structured settlements** and shall distribute such pamphlets free of charge, except that persons engaged in the business of purchasing **structured settlement** payment rights may be charged a reasonable fee for such pamphlets.

(Code 1981, § 51-12-73, enacted by Ga. L. 1999, p. 853, § 1.)

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NOTES, REFERENCES, AND ANNOTATIONS

Delayed effective date. -- This Code section, as set out above, becomes effective only when funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. No such specific appropriation was made in 1999, 2000, 2001, or 2002.

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51-12-76 Provisions unwaivable; no penalty or forfeiture.

(a) The provisions of this article may 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:

(1) Any failure of such transfer to satisfy the conditions of this article;
or

(2) Any failure by the payee to execute the transfer agreement or any cancellation by the payee within the time prescribed in Code Section 51-12-72.

(Code 1981, § 51-12-76, enacted by Ga. L. 1999, p. 853, § 1.)

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

NOTES, REFERENCES, AND ANNOTATIONS

Code commission notes. -- Pursuant to Code Section 28-9-5, in 1999, a colon was added at the end of the introductory paragraph of subsection (b).

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51-12-77 Construction in accordance with other laws.

Nothing contained in this article shall 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.

(Code 1981, § 51-12-77, enacted by Ga. L. 1999, p. 853, § 1.) L. 1999, p. 853, § 1.)

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