

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1205
(Representatives Keiser, Wald)
(Senator Klein)

AN ACT to create and enact chapter 32-03.4 of the North Dakota Century Code, relating to the transfer of structured settlements; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 32-03.4 of the North Dakota Century Code is created and enacted as follows:

32-03.4-01. Definitions. For purposes of this chapter:

1. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
2. "Dependent" includes a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony or support.
3. "Discounted present value" means the present value of future payments determined by discounting those 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 such consideration.
5. "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser:
 - a. Who is engaged by a claimant or payee to render advice concerning the legal, tax, and financial implications of a structured settlement or a transfer of structured settlement payment rights;
 - b. Who is not in any manner affiliated with or compensated by the defendant in the settlement or the transferee of the transfer; and
 - c. Whose compensation for rendering the advice is not affected by whether a settlement or transfer occurs or does not occur.
6. "Interested party" 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 subsection 5 of section 32-03.4-02.
8. "Payee" means an individual who is receiving tax-free payments under a structured settlement and 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 providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code [26 U.S.C. 130], as amended.
11. "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.
12. "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.
13. "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.
14. "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.
15. "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 at least one of the following applies:
 - 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 approved by a court in this state; or
 - c. The structured settlement agreement is expressly governed by the laws of this state.
16. "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 other approval of any court or other governmental authority that authorized or approved such structured settlement.
17. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. The term does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the 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.
18. "Transfer agreement" means the agreement that provides for a transfer of structured settlement payment rights.
19. "Transfer expenses" means all expenses of a transfer which 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 recordation fees, judgment and lien search fees, finder's fees, commissions, and other payments to a broker or other intermediary. The term does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.
20. "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

32-03.4-02. Required disclosures to payee. At least three days before the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold and in at least fourteen-point type, setting forth:

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 must 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 list 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 any such fees and disbursements;
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, no later than the third business day after the date the agreement is signed by the payee.

32-03.4-03. Approval of transfers of structured settlement payment rights. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer may not 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 the following express findings by the court:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable. If the court makes the findings as outlined in this subsection, there is not a requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this subsection;
2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived the advice in writing; and
3. The transfer does not contravene any applicable statute or the order of any court or other governmental authority.

32-03.4-04. 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 are discharged and released from all liability for the transferred payments as to all parties except the transferee;
2. The transferee is 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 those 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 those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this chapter;
3. Neither the annuity issuer nor the structured settlement obligor 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
4. 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.

32-03.4-05. Procedure for approval of transfers.

1. An application for approval of a transfer of structured settlement payment rights under this chapter must be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court that approved the structured settlement agreement.
2. At least twenty days before the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 32-03.4-03, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The notice must include:
 - a. A copy of the transferee's application;
 - b. A copy of the transfer agreement;
 - c. A copy of the disclosure statement required under section 32-03.4-02;
 - d. A list of each of the payee's dependents and each dependent's age;
 - e. 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 by participating in the hearing;
 - f. Notification of the time and place of the hearing; and
 - g. Notification of 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, which may be not less than fifteen days after service of the transferee's notice.

32-03.4-06. No waiver by payee. The requirements of this chapter may not be waived by any payee.

32-03.4-07. Disputes decided under state law. Any transfer agreement entered on or after the effective date of this chapter 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, must be determined in and under the laws of this state. Such a transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

32-03.4-08. Life-contingent payments not to be transferred - Exception. A transfer of structured settlement payment rights may 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 periodically confirming the payee's survival and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

32-03.4-09. No payee liability for failure to comply with chapter. 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.

32-03.4-10. Effect of chapter on existing laws and transfer agreements. This chapter does not authorize any transfer of structured settlement payment rights in contravention of any law nor does this chapter imply that any transfer under a transfer agreement entered before August 1, 2009, is valid or invalid.

32-03.4-11. Transferee solely responsible for certain requirements. In any transfer of structured settlement payment rights, compliance with the requirements of section 32-03.4-02 and fulfillment of the conditions of section 32-03.4-03 are the sole responsibility of the transferee. Neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with those requirements or failure to fulfill those conditions.

32-03.4-12. Penalty. Any transferee that willfully violates this chapter is guilty of an infraction. A second or subsequent violation of this chapter is a class B misdemeanor.

32-03.4-13. Applicability of chapter. This chapter applies to any transfer of structured settlement payment rights under a transfer agreement entered after July 31, 2009. This chapter does not imply that any transfer under a transfer agreement reached before August 1, 2009, is either effective or ineffective.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1205.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State