

**STRUCTURED SETTLEMENT AGREEMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

**This act enacts the Structured Settlement Protection Act. It provides guidelines for transferring structured settlements. It also requires notice and hearing requirements and provides for agreements to be approved by a court. This act provides an effective date.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**70A-9a-109**, as enacted by Chapter 252, Laws of Utah 2000

ENACTS:

**78-59-101**, Utah Code Annotated 1953

**78-59-102**, Utah Code Annotated 1953

**78-59-103**, Utah Code Annotated 1953

**78-59-104**, Utah Code Annotated 1953

**78-59-105**, Utah Code Annotated 1953

**78-59-106**, Utah Code Annotated 1953

**78-59-107**, Utah Code Annotated 1953

**78-59-108**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **70A-9a-109** is amended to read:

**70A-9a-109. Scope.**

(1) Except as otherwise provided in Subsections (3) and (4), this chapter applies to:

(a) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(d) a consignment;

(e) a security interest arising under Section 70A-2-401 or 70A-2-505 or Subsection

70A-2-711(3) or 70A-2a-508(5), as provided in Section 70A-9a-110; and

(f) a security interest arising under Section 70A-4-210 or 70A-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 70A-5-114.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 70A-9a-333 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or set-off, but:

(i) Section 70A-9a-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(ii) Section 70A-9a-404 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(i) liens on real property in Sections 70A-9a-203 and 70A-9a-308;

(ii) fixtures in Section 70A-9a-334;

(iii) fixture filings in Sections 70A-9a-501, 70A-9a-502, 70A-9a-512, 70A-9a-516, and 70A-9a-519; and

(iv) security agreements covering personal and real property in Section 70A-9a-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds; [or]

(m) an assignment of a deposit account in a consumer transaction, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds[-];

(n) an assignment of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2); or

(o) an assignment of a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4).

(5) Notwithstanding anything to the contrary in this section, Subsections (4)(n) and (o) shall only be effective to security interests created on or after May 6, 2002.

Section 2. Section **78-59-101** is enacted to read:

**CHAPTER 59. STRUCTURED SETTLEMENT PROTECTION ACT****78-59-101. Title.**

This chapter is known as the "Structured Settlement Protection Act."

Section 3. Section **78-59-102** is enacted to read:

**78-59-102. 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) "Dependents" include a payee's spouse and minor children and all 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 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 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 Subsection 78-59-103(5).

(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 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 United States Internal Revenue Code.

(11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(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, where:

(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.

(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 other government authority that authorized or approved the structured settlement.

(18) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided

that the term "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 the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce a 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 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, without limitation, court filing fees, attorneys' 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" do 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.

Section 4. Section **78-59-103** is enacted to read:

**78-59-103. Required disclosures to payee.**

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point, 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 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 attorneys' 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 of the 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, not later than the third business day after the date the agreement is signed by the payee.

Section 5. Section **78-59-104** is enacted to read:

**78-59-104. Approval of transfers of structured settlement payment rights.**

Direct or indirect transfer of structured settlement payment rights may not be 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 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 such advice or knowingly waived such advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Section 6. Section **78-59-105** is enacted to read:

**78-59-105. 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 attorneys' 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) 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.

(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.

Section 7. Section **78-59-106** is enacted to read:

**78-59-106. Procedure for approval of transfers.**

(1) An application under this chapter for approval of a transfer of structured settlement payment rights shall 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 which approved the structured settlement agreement.

(2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 78-59-104, 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, including with the notice:

(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 78-59-103;

(d) a listing of each of the payee's dependents, together with 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 responsible administrative authority or by participating in the hearing; and

(f) 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.

Section 8. Section **78-59-107** is enacted to read:

**78-59-107. General provisions -- Construction.**

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

(2) Any transfer agreement entered into on or after May 6, 2002 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 may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) The 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 has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

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

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

(4) 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 requirements of this chapter.

(5) Nothing contained in this chapter shall 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 prior to May 6, 2002 is valid or invalid.

(6) Compliance with the requirements set forth in Section 78-59-103 and fulfillment of the conditions set forth in Section 78-59-104 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the

requirements or failure to fulfill the conditions.

Section 9. Section **78-59-108** is enacted to read:

**78-59-108. Effective date.**

This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after May 6, 2002; provided, however, that nothing contained in this chapter shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.