

STATE OF NEW YORK

6407

2017-2018 Regular Sessions

IN SENATE

May 17, 2017

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to transfers of structured settlements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions (h) and (i) of section 5-1703 of the general
2 obligations law, as added by chapter 537 of the laws of 2002, are
3 amended and a new subdivision (j) is added to read as follows:

4 (h) the amount of any penalties or liquidated damages payable by the
5 payee in the event of any breach of the transfer agreement by the payee;

6 [~~and~~]

7 (i) a statement that the payee has the right to cancel the transfer
8 agreement, without penalty or further obligation, not later than the
9 third business day after the date the agreement is signed by the
10 payee[~~-~~]; and

11 (j) a statement that the payee has no obligation to pay back any sums
12 received from the transferee unless and until a court of competent
13 jurisdiction has approved the transfer.

14 § 2. Section 5-1705 of the general obligations law, as amended by
15 chapter 511 of the laws of 2010, is amended to read as follows:

16 § 5-1705. Procedure for approval of transfers. (a) An action for
17 approval of a transfer of a structured settlement shall be by a special
18 proceeding brought on only by order to show cause.

19 (b) Such proceeding shall be commenced to obtain approval of a trans-
20 fer of structured settlement payment rights. Such proceeding shall be
21 commenced:

22 (i) in the supreme court of the county in which the payee resides; or

23 (ii) in any court which approved the structured settlement agreement.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 (c) The caption of a petition for approval of a transfer of structured
2 settlement payment rights must identify the transferee as the petitioner
3 and the payee as the respondent.

4 (d) A copy of the order to show cause and petition shall be served
5 upon all interested parties at least twenty days before the time at
6 which the petition is noticed to be heard. A response shall be served at
7 least seven days before the petition is noticed to be heard.

8 ~~[(d)]~~ (e) A petition for approval of a transfer of structured settle-
9 ment payment rights shall include:

10 (i) a copy of the transfer agreement;

11 (ii) a copy of the disclosure statement and proof of notice of that
12 statement required under section 5-1703 of this title;

13 (iii) a listing of each of the payee's dependents, together with each
14 dependent's age; ~~and~~

15 (iv) a statement setting forth whether there have been any previous
16 transfers or applications for transfer of the structured settlement
17 payment rights and giving details of all such transfers or applications
18 for transfer; and

19 (v) if applicable, a copy of the court order by which the payee has
20 been adjudicated incompetent or assigned a guardian.

21 ~~[(e)]~~ (f) On the hearing, the payee shall attend before the court
22 unless attendance is excused for good cause.

23 (g) Notwithstanding any other provision of law, the court shall
24 appoint a guardian ad litem for the payee when the payee is an infant
25 or, as provided in section twelve hundred one and rule twelve hundred
26 two of the civil practice law and rules, when the payee is an adult
27 incapable of adequately prosecuting or defending his or her rights. The
28 guardian ad litem's fees shall be paid by the transferee.

29 (h) Whether or not the payee appears by a guardian or guardian ad
30 litem, the court shall appoint an independent advisor to counsel the
31 payee about the terms of the transfer if the court determines that the
32 payee would benefit from assistance in understanding the legal and
33 financial implications of the transfer and in identifying possible
34 alternatives to the transfer. The independent advisor shall be appointed
35 from the fiduciary list established under part thirty-six of the rules
36 of the chief judge and shall file a report with the court, with copies
37 to the parties, as appropriate, to assist the court in making the find-
38 ings required under section 5-1706 of this title. The independent advi-
39 sor's fees shall be set by the court and paid by the transferee.

40 § 3. Section 5-1708 of the general obligations law is amended by
41 adding a new subdivision (h) to read as follows:

42 (h) In the event that a petition for approval of a transfer of struc-
43 tured settlement payment rights is denied, the transferee will have no
44 right to recover from the payee any funds that have been advanced to the
45 payee.

46 § 4. This act shall take effect immediately.