AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 982

Introduced by Assembly Member Tran

February 27, 2009

An act to amend Sections 10134, 10138, and 10139.5 of the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

AB 982, as amended, Tran. Structured settlements: transfers.

Existing law provides definitions, including for "interested parties," for purposes of the provisions regulating the transfer of structured settlement payment rights.

This bill would revise the definition of "interested parties" for purposes of those provisions.

Existing law prohibits the inclusion of various provisions in an agreement for the transfer of structured settlement payment rights and would make an agreement void and unenforceable if a prohibited provision is included. Among the provisions prohibited from being included in those agreements are any forum selection provision providing for jurisdiction to be in a court outside of California for any action arising under the contract and any choice-of-law provision that provides for controlling law to be other than California law in any action arising under the contract.

This bill would prohibit those 2 provisions if the payee is domiciled in California at the time that the transfer agreement is signed by the payee.

Existing law provides that a transfer of structured settlement payment rights is not effective unless the transfer has been approved in advance in a final court order based on certain findings. Existing law provides where such an application for approval shall be filed and provides for a certain notice, which is to include specified documents, to be filed with the court and served on interested parties not less than 20 days prior to the scheduled hearing on the application for approval of a transfer of structured settlement payment rights.

This bill would make specified changes to the requirements regarding the court's written findings, the county where a transfer approval application is required to be filed, and the documents to be included with the notice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10134 of the Insurance Code is amended to read:

10134. For the purposes of this article, the following terms have the following meanings:

(a) "Buyer's first right of refusal" means any provision in the transfer agreement or related documents that obligate the payee to give to the buyer the first choice or option to purchase any remaining structured settlement rights belonging to the payee.

(b) "Dependents" include the 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.

(c) "Discounted present value" means the fair present value of future payments, as 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.

(d) "Effective equivalent interest rate," with respect to a transfer of structured settlement payment rights, means the annualized rate of interest on the net advance amount, calculated by treating the transferred structured settlement payments as if they were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal.

(e) "Expenses" means all broker's commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, and charges that a payee would have to pay to transfer the structured settlement payment rights of a structured settlement agreement or that would be deducted from the gross consideration that would be paid to the payee in connection with the transfer of the structured settlement payment rights of a structured settlement agreement.

(f) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(1) The adviser is engaged by a claimant or payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights.

(2) The adviser's compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement or transfer.

(3) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(g) "Interested parties" means, with respect to a structured settlement agreement, the payee, the payee's attorney, 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 who has continuing rights or obligations under the structured settlement agreement if those continuing rights or obligations could be affected by the proposed transfer. If the designated beneficiary is a minor, the beneficiary's parent or guardian shall be an interested party.

(h) "Payee" means an individual who received tax-free payments pursuant to a structured settlement agreement.

(i) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section

130 of Title 26 of the United States Code, as amended from time to time.

(j) “Structured settlement agreement” means an arrangement for periodic payment of damages established by settlement or judgment in resolution of a tort claim in which the payment of the judgment or award is paid in whole, or in part, in periodic tax-free payments rather than a lump-sum payment. A structured settlement agreement entered into pursuant to Section 667.7 of the Code of Civil Procedure or Section 970.6 or 984 of the Government Code is not subject to the provisions of this article other than the requirements of Section 10138.

(k) “Structured settlement obligor” means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(*l*) “Structured settlement payment rights” means rights to receive periodic payments, including lump-sum payments, pursuant to a structured settlement agreement, whether from the settlement obligor or an annuity issuer.

(m) “Terms of the structured settlement” include, with respect to a structured settlement agreement, the terms of the structured settlement agreement, annuity contract, qualified assignment agreement, and any order or approval of a court or responsible administrative authority or other governmental authority authorizing or approving the structured settlement.

(n) “Transfer” means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration.

(o) “Transfer agreement” means the agreement providing for the transfer, and any other document used to effectuate the transfer, from the payee to the transferee of structured settlement payment rights of a structured settlement agreement.

(p) “Transferee” means any person receiving structured settlement payment rights resulting from a transfer.

SEC. 2. Section 10138 of the Insurance Code is amended to read:

10138. (a) A transfer agreement, as defined in subdivision (o) of Section 10134, shall not include any provision described in the paragraphs below. Any inclusion of a prohibited provision, with respect to a seller who is a California resident, shall make the contract void and unenforceable.

(1) Any provision that waives the seller's right to sue under any law, or in which the seller agrees not to sue, or that waives jurisdiction or standing to sue under the contract.

(2) Any provision that requires the seller to indemnify and hold harmless the buyer, or to pay the buyer's costs of defense, in any claim or action brought by the seller or on the seller's behalf contesting the sale for any reason.

(3) Any provision that waives benefits or rights conferred by law with respect to garnishment of wages.

(4) Any provision providing that the contract is confidential or proprietary, belonging to the buyer.

(5) Any provision in which the seller stipulates to a confession of judgment.

(6) Any provision requiring the seller to pay the buyer's attorney's fees and costs if the purchase agreement is not completed.

(7) Any provision requiring the seller to pay any tax liability arising under the federal tax laws, other than the seller's own tax liability, if any, that results from the transfer.

(8) Any provision providing for brokerage fees incurred in the contract to be deducted from the purchase price disclosed pursuant to paragraph (5) of subdivision (b) of Section 10136.

(9) If the payee is domiciled in California at the time that the transfer agreement is signed by the payee, any forum selection provision providing for jurisdiction to be in a court *or other forum* outside of California for any action arising under the contract.

(10) If the payee is domiciled in California at the time that the transfer agreement is signed by the payee, any choice-of-law provision that provides for controlling law to be other than California law in any action arising under the contract.

(11) A provision that provides the transferee with a security interest or collateral interest in any structured settlement payment rights that exceed the actual dollar amount of the structured settlement payment rights being transferred.

(12) Any provision that creates a "buyer's first right of refusal" to purchase any remaining structured payment rights that the payee may desire to sell in the future.

(b) The provisions in this section may not be waived by agreement of the parties.

SEC. 3. Section 10139.5 of the Insurance Code is amended to read:

10139.5. (a) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not 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 written 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 that advice or knowingly waived the opportunity to seek and receive that advice in writing.

(3) The transferee has provided the payee with a disclosure form that complies with Section 10136 and the transfer agreement complies with Sections 10136 and 10138.

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

(5) The payee reasonably understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Section 10136.

(6) The payee reasonably understands and does not wish to exercise the payee's right to cancel the transfer agreement.

(b) Following a transfer of structured settlement payment rights under this article:

(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 if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) 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 article.

(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 article.

(c) (1) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides at the time the transfer agreement is signed by the payee or, if the payee is not domiciled in California *at the time the transfer agreement is signed by the payee*, the county where the structured settlement obligor or annuity issuer is domiciled.

(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 this article, 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, and shall include the following with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (b) of Section 10136.

(E) A copy of the annuity ~~contract, if available.~~ *contract.*

(F) A copy of any qualified assignment ~~agreement, if available.~~ *agreement.*

(G) A copy of the underlying structured settlement ~~agreement, if available.~~ *agreement.*

(H) 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.

(I) 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 may not be less than 15 days after service of the transferee's notice, in order to be considered by the court.

(d) All court costs and filing fees shall be paid by the transferee.

(e) No later than the time of filing the petition for court approval, the transferee shall advise the payee of the payee's right to seek independent counsel and financial advice in connection with the transferee's petition for court approval of the transfer agreement, and shall further advise the payee that if the payee retains counsel, a licensed certified public accountant, or a licensed actuary in connection with a petition for an order approving the transfer agreement, that the transferee shall pay the fees of the payee's counsel, accountant, or actuary, regardless of whether the transfer agreement is approved, and regardless of whether the attorney, accountant, or actuary files any document or appears at the hearing on the application for transfer, in an aggregate amount not to exceed one thousand five hundred dollars ($1,500). The transferee's accountant, counsel, or actuary may not advise the payee.

(f) The court shall retain continuing jurisdiction to interpret and monitor the implementation of the transfer agreement as justice requires.

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