

*** THIS DOCUMENT IS CURRENT THROUGH THE 2001 LEGISLATIVE SESSION ***

TITLE XXXVII INSURANCE

CHAPTER 626 INSURANCE FIELD REPRESENTATIVES AND OPERATIONS

PART X VIATICAL SETTLEMENTS

Fla. Stat. § 626.99245 (2001)

626.99245 Conflict of regulation of viaticals.

(1) A viatical settlement provider who from this state enters into a viatical settlement purchase agreement with a purchaser who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement purchase agreements, shall be governed in the effectuation of that viatical settlement purchase agreement by the statutes and regulations of the purchaser's state of residence. If the state in which the purchaser is a resident has not enacted statutes or regulations governing viatical settlement purchase agreements, the provider shall give the purchaser notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in these states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. However, the forms used in those states need not be approved by the department.

(2) A viatical settlement provider who from this state enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence. If the state in which the viator is a resident has not enacted statutes or regulations governing viatical settlement agreements, the provider shall give the viator notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in those states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. The forms used in those states need not be approved by the department.

(3) This section does not affect the requirement of *ss. 626.9911(6) and 626.9912(1)* that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the department. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts and effectuating viatical settlement purchase agreements from offices in this state, regardless of the state of residence of the viator or the viatical settlement purchaser.

HISTORY: s. 7, ch. 2000-344; s. 6, ch. 2001-207; s. 6, ch. 2001-247.

ANNOTATED LAWS OF MASSACHUSETTS
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*** THIS DOCUMENT IS CURRENT THROUGH 2002 CH. 97, 4/17/02 ***

PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

TITLE II. ACTIONS AND PROCEEDINGS THEREIN

CHAPTER 231C. STRUCTURED SETTLEMENT CONTRACTS

GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY

Mass. Ann. Laws ch. 231C, § 1 (2002)

§ 1. Definitions.

For the purposes of this chapter the following words shall have the following meanings unless the context otherwise requires:

"Annuity issuer", an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement.

"Applicable law", any of the following, as applicable in interpreting the terms of a structured settlement:

- (1) the laws of the United States;
- (2) the laws of the commonwealth, including principles of equity applied in the courts of the commonwealth; and
- (3) the laws of any other jurisdiction; (i) that is the domicile of the payee or any other interested party; (ii) under whose law 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.

"Applicable federal rate", the most recently published applicable rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service pursuant to section 7520 of the United States Internal Revenue Code.

"Assignee", a party that acquires structured settlement payment rights directly or indirectly from a transferee of such rights.

"Dependents", a payee's spouse and minor children and all other family members and other persons from whom the payee is legally obligated to provide support, including spousal maintenance.

"Discount/finance charge", the sum of all charges payable directly or indirectly from assigned structured settlement payments and imposed directly or indirectly by the transferee as an incident to a transfer of structured settlement payment rights, including:

- (1) interest charges, discounts and other compensation for the time value of money;
- (2) all application, origination, processing, underwriting, closing, filing and notary fees and all similar charges, however denominated; and
- (3) all charges for commissions or brokerage, irrespective of the identity of the party to whom such charges are paid or payable.

The term discount/finance charge shall not include any fee or other obligation incurred by a payee in obtaining independent professional advice concerning a transfer of structured settlement payment rights.

"Discounted present value", with respect to a proposed transfer of structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate as the discount rate.

"Independent professional advice", advice of an attorney, certified public accountant, actuary, or other licensed professional advisor:

- (1) who is engaged by a payee to render advice concerning the legal, tax and financial implications of a transfer of structured settlement payment rights;
- (2) who is not in any manner affiliated with or compensated by the transferee of the transfer; and
- (3) whose compensation for providing the advice is not affected by whether or not a transfer occurs.

"Interested party", with respect to any structured settlement, the following:

- (1) the payee;
- (2) a beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, if such designated beneficiary is a minor, the designated beneficiary's parent or guardian;
- (3) the annuity issuer;
- (4) the structured settlement obligor; and
- (5) any other party that has continuing rights or obligations under the structured settlement.

"Payee", an individual who is receiving tax free damage payments under a structured settlement and proposes to make a transfer of payment rights under the structured settlement.

"Qualified assignment agreement", an agreement providing for a qualified assignment as provided by the United States Internal Revenue Code, Title 26, section 130.

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

"Settled claim", the original tort claim or workers' compensation claim resolved by a structured settlement.

"Structured settlement", 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.

"Structured settlement agreement", the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments.

"Structured settlement obligor", the party that has the obligation to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights", rights to receive periodic payments, including lump sum payment under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(1) the payee or any other interested party is domiciled in the state;

(2) the structured settlement agreement was approved by a court or responsible administrative authority in the commonwealth; or

(3) the settled claim was pending before a court of the commonwealth when the parties entered into the structured settlement agreement.

"Terms of the structured settlement", the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement and an order or approval of a court, responsible administrative authority or other government authority authorizing or approving the structured settlement.

"Transfer", a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

"Transfer agreement", the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"Transferee", a person who is receiving or will receive structured settlement payment rights resulting from a transfer.

HISTORY: Added by 2000, 427, approved Jan 12, 2001, effective April 12, 2001

NOTES:

EDITORIAL NOTE-

Section 2 of the inserting act provides as follows:

Section 2. This act shall not apply to transfers made on or before the effective date of this act.

TOTAL CLIENT-SERVICE LIBRARY REFERENCES--

5 Am Jur Legal Forms 2d, Compromise and Settlement § § 61:63 et seq.

31 Am Jur Trials 595, Evaluation of Structured Settlements.

ANNOTATIONS--

Propriety and effect of "structured settlement" whereby damages are paid in installments over a period of time, and attorneys' fees arrangements in relation thereto. *31 ALR4th 95*.

Mass. Ann. Laws ch. 231C, § 2 (2002)

§ 2. Authorization; Requirements; Restrictions; Disclosure; Jurisdiction; filing.

(a) 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 a payment directly or indirectly to a transferee of structured settlement payment rights, unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority, such as an administrative law judge, based on the court's or responsible administrative authority's written express findings that:

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

(2) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:

(i) the amounts and due dates of the structured settlement payments to be transferred;

(ii) the aggregate amount of the payments;

(iii) the discounted present value of the payments, together with the discount rate used in determining the discounted present value;

(iv) the gross amount payable to the payee in exchange for the payments;

(v) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral 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;

(vi) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in clause (v);

(vii) the quotient; expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments, which shall be disclosed in the statement as follows: "The net amount that you will receive from us in exchange for your future structured settlement payments represent% of the estimated current value of the payments";

(viii) the effective annual interest rate, which rate shall be disclosed in the statement as follows: "Based on the net amount that you receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of% per year"; and

(ix) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties payable by the payee in the event of a breach of the transfer agreement by the payee;

(3) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;

(4) the payee has received, or waived the right to receive independent professional advice regarding the legal, tax and financial implications of the transfer;

(5) 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 and has filed a copy of the notice with the court or responsible administrative authority;

(6) the transfer agreement provides that if the payee is domiciled in the commonwealth, any disputes between the parties shall be governed, interpreted, construed, and enforced in accordance with the laws of the commonwealth and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement; and

(7) the court or responsible administrative agency has made a determination that the net amount payable to the payee is fair, just and reasonable under the circumstances then existing.

(b) The transfer agreement shall also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in the commonwealth. If the transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court or responsible administrative authority may grant, deny or impose conditions upon the proposed transfer as the court or responsible administrative authority deems just and proper under the facts and circumstances in accordance with established principles of law. Any order approving the transfer shall require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.

(c) A provision in a transfer agreement giving a transferee power to confess judgment against a payee shall be unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

(d) In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in the commonwealth, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

(1) the amounts and due dates of the periodic payments to be made under the structured settlement agreement; in the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded;

(2) the amount of the premium payable to the annuity issuer;

(3) the discounted present value of all periodic payments that are not life-contingent, together with the discount rate used in determining the discounted present value;

(4) the nature and amount of any cost that may be deducted from any of the periodic payments;

(5) where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law; and

(6) that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

(e) The district court shall have nonexclusive jurisdiction over an application for authorization of a transfer of structured settlement payment rights.

(f) Not less than 20 days before the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights, the transferee shall file with the court or responsible administrative authority, any other government authority that previously approved the structured settlement, and all interested parties a notice of the proposed transfer and the application for its authorization. The notice shall include:

(1) a copy of the transferee's application to the court or responsible administrative authority;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under this section;

(4) notification that an 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

(5) 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 shall be filed, in order to be considered by the court or responsible administrative authority.

Written responses to the application shall be filed within 15 days after service of the transferee's notice.

HISTORY: Added by 2000, 427, approved Jan 12, 2001, effective April 12, 2001

NOTES:

EDITORIAL NOTE-

Section 2 of the inserting act provides as follows:

Section 2. This act shall not apply to transfers made on or before the effective date of this act.

TOTAL CLIENT-SERVICE LIBRARY REFERENCES--

5 Am Jur Legal Forms 2d, Compromise and Settlement § § 61:63 et seq.

31 Am Jur Trials 595, Evaluation of Structured Settlements.

53 Am Jur Trials 1, Evaluation and Settlement of Personal Injury and Wrongful Death Cases.

ANNOTATIONS--

Propriety and effect of "structured settlement" whereby damages are paid in installments over a period of time, and attorneys' fees arrangements in relation thereto. *31 ALR4th 95*.

Mass. Ann. Laws ch. 231C, § 3 (2002)

§ 3. Limitations.

(a) The provisions of section 2 to 4, inclusive, shall not be waived.

(b) No payee who proposes to make a transfer of structured settlement payment rights shall incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee based on the failure of the transfer to satisfy the conditions of section 2.

HISTORY: Added by 2000, 427, approved Jan 12, 2001, effective April 12, 2001

NOTES:

EDITORIAL NOTE-

Section 2 of the inserting act provides as follows:

Section 2. This act shall not apply to transfers made on or before the effective date of this act.

TOTAL CLIENT-SERVICE LIBRARY REFERENCES--

5 Am Jur Legal Forms 2d, Compromise and Settlement § § 61:63 et seq.

31 Am Jur Trials 595, Evaluation of Structured Settlements.

53 Am Jur Trials 1, Evaluation and Settlement of Personal Injury and Wrongful Death Cases.

ANNOTATIONS--

Propriety and effect of "structured settlement" whereby damages are paid in installments over a period of time, and attorneys' fees arrangements in relation thereto. *31 ALR4th 95.*

Mass. Ann. Laws ch. 231C, § 4 (2002)

§ 4. Violations.

(a) If in connection with a transfer of structured settlement payment rights, a transferee has violated the discount/finance charge stipulation, neither the transferee nor any assignee shall be entitled to collect from the transferred payment rights, or from the payee, any amount in excess of the net advance amount, and the payee shall have a right to recover from the transferee or any assignee:

- (1) a refund of any excess amounts previously received by the transferee or any assignee;
- (2) a penalty in an amount determined by the court; and
- (3) reasonable costs and attorney's fees.

(b) If in connection with a transfer of structured settlement payment rights, the transferee has violated the disclosure requirements in section 3, the transferee and any assignees shall be liable to the payee for:

- (1) a penalty in an amount determined by the court; and
- (2) reasonable costs and attorney's fees.

(c) A transferee or assignee shall not be liable for a penalty in any action brought under this section if the transferee or assignee establishes by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the transferee's maintenance of procedures reasonably designed to avoid such errors.

(d) No action may be brought under this section if:

- (1) in the case of a violation of the discount/finance charge stipulation, more than one year after the due date of the last transferred structured settlement payment; and
- (2) in the case of the disclosure requirements of section 2, more than one year after the due date of the first transferred structured settlement payment.

(e) If the attorney general has reason to believe that any transferee has violated this chapter, the attorney general may bring a civil action for injunctive relief and such penalties and other relief as may be appropriate to secure compliance with this chapter.

HISTORY: Added by 2000, 427, approved Jan 12, 2001, effective April 12, 2001

NOTES:

EDITORIAL NOTE-

Section 2 of the inserting act provides as follows:

Section 2. This act shall not apply to transfers made on or before the effective date of this act.

TOTAL CLIENT-SERVICE LIBRARY REFERENCES--

5 Am Jur Legal Forms 2d, Compromise and Settlement § § 61:63 et seq.

31 Am Jur Trials 595, Evaluation of Structured Settlements.

53 Am Jur Trials 1, Evaluation and Settlement of Personal Injury and Wrongful Death Cases.

ANNOTATIONS--

Propriety and effect of "structured settlement" whereby damages are paid in installments over a period of time, and attorneys' fees arrangements in relation thereto. *31 ALR4th 95.*

Mass. Ann. Laws ch. 231C, § 5 (2002)

§ 5. Workers' Compensation.

Nothing contained in this chapter shall be construed to authorize any transfer of workers' compensation payment rights in contravention of applicable law or to give effect to any transfer of workers' compensation or other payment rights that is invalid under applicable law.

HISTORY: Added by 2000, 427, approved Jan 12, 2001, effective April 12, 2001

NOTES:

EDITORIAL NOTE-

Section 2 of the inserting act provides as follows:

Section 2. This act shall not apply to transfers made on or before the effective date of this act.

TOTAL CLIENT-SERVICE LIBRARY REFERENCES--

5 Am Jur Legal Forms 2d, Compromise and Settlement § § 61:63 et seq.

31 Am Jur Trials 595, Evaluation of Structured Settlements.

53 Am Jur Trials 1, Evaluation and Settlement of Personal Injury and Wrongful Death Cases.

ANNOTATIONS--

Propriety and effect of "structured settlement" whereby damages are paid in installments over a period of time, and attorneys' fees arrangements in relation thereto. *31 ALR4th 95*.

1 of 3 DOCUMENTS

MINNESOTA STATUTES 2001

*** THIS DOCUMENT IS CURRENT THROUGH ALL 2001 LEGISLATION ***

Judicial Procedure, District Court

CHAPTER 549 COSTS, DISBURSEMENTS

STRUCTURED SETTLEMENTS

Minn. Stat. § 549.31 (2001)

549.31 Conditions to transfers of structured settlement payment rights and structured settlement agreements

Subdivision 1. Generally. No direct or indirect transfer of structured settlement payment rights is effective and no structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has

been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority, based on the court's or responsible administrative authority's written express findings that:

(a) the transfer complies with the requirements of sections 549.31 to 549.34 and will not contravene other applicable law;

(b) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:

(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, together with the discount rate used in determining the discounted present value;

(4) the gross amount payable to the payee in exchange for the payments;

(5) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral 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;

(6) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in clause (5);

(7) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and

(8) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;

(c) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;

(d) the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(e) 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 and has filed a copy of the notice with the court or responsible administrative authority; and

(f) that the transfer agreement provides that any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this state and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement. The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this state.

If the transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court or responsible administrative authority may grant, deny, or impose conditions upon the proposed transfer as the court or responsible administrative authority deems just and proper under

the facts and circumstances in accordance with established principles of law. Any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.

Subd. 2. Unenforceable confessions of judgment. A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

Subd. 3. Initial disclosure of structured settlement terms. In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in this state, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

(1) the amounts and due dates of the periodic payments to be made under the structured settlement agreement. In the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded;

(2) the amount of the premium payable to the annuity issuer;

(3) the discounted present value of all periodic payments that are not life-contingent, together with the discount rate used in determining the discounted present value;

(4) the nature and amount of any cost that may be deducted from any of the periodic payments;

(5) where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law; and

(6) that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

HISTORY: HISTORY: 1999 c 212 s 3