

Reviewing Structured Settlement Sales: The Courts' Role

“Get Cash for Your Structured Settlement Payments NOW!” “See What Your Structured Settlement Payments Can Do!” “Get the Cash You Need Now!”

Ever see ads like these and wonder what they’re all about? If you’ve heard of structured settlements, you may know that they are a way for injured parties to receive compensation for their injuries over time—in periodic payments—rather than in an immediate lump sum. Typically funded through the purchase of annuities, these settlements promote financial stability for injured people by preventing the money from dissipating too quickly. They also are a useful way to preserve a minor’s settlement funds until after the minor reaches adulthood. The federal government encourages the use of structured settlements by allowing qualified payments to be excluded from the recipients’ taxable income.

In the 1990s, a number of companies began using aggressive marketing encouraging injured parties to transfer structured settlement payment rights in exchange for an immediate lump-sum payment. Often these companies paid only a relatively small percentage of the settlements’ present value and incorporated confusing, onerous terms that left injured parties vulnerable to court judgments and tax liability.

To curb this trend, most states have enacted some variation of the model Structured Settlement Protection Act (SSPA). **North Carolina’s version of the SSPA was enacted in 1999 and is found in [G.S. 1-543.10 through 1-543.15](#).** Under North Carolina’s SSPA, for a transfer to be effective it must be “authorized in advance in a final order of a court of competent jurisdiction” (or a responsible administrative authority). The court must find that the transfer is fair and reasonable and in the transferring party’s best interest. Typically the court will weigh the person’s need for immediate cash (for example, to pay for a child’s education) against the benefits of the regular future income the structured settlement provides. The court must also find that the injured party has received independent, professional financial advice about the transfer. The court’s order must also specify that the transferee company has specifically disclosed all fees and expenses associated with the transfer, the gross and net payments made in exchange for the transfer, and the quotient, the discount rate, and all penalties and liquidated damages. The discount rate, fees, charges, expenses, and commissions may not exceed certain sums specified in the statute. G.S. 1-543.12.

If the structured settlement resolved an action that had been filed in court or with an administrative agency, that court or agency has exclusive jurisdiction under the SSPA to review a transfer. The application for approval should be made as a motion in the cause in that action. If, on the other hand, no action was ever filed prior to settlement, the application for approval should be filed in superior court as a special proceeding. G.S. 1-543.13 - .14. The SSPA contemplates that the court or agency will hold a hearing to review the matter, and it specifies the materials the company must file and serve prior to the hearing. G.S. 1-543.14.

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The requirements of the SSPA cannot be waived, and the onus of compliance is on the transferee company. If a company accepts a transfer of payment rights without first complying with the SSPA, the transferring party has an action against the company for monetary loss, damages of up to \$5,000, or both, and may recover attorney fees and costs. G.S. 1-543.15.

In short, the SSPA has given our courts a central role in limiting abusive practices surrounding sales of structured settlements. The ads may make it look easy to “get cash now,” but the process in fact involves more than signing a few papers and driving off with check in hand.