

STRUCTURED SETTLEMENT PROTECTION ACTS

RECENT CHANGES TO STATE STRUCTURED SETTLEMENT PROTECTION ACTS (SSPA)

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Florida

Fla. Laws Ch. 2016-45 (2016 S.B. 458) – Signed by Governor Rick Scott on March 10, 2016, taking effect immediately; notable provisions include requirement that petition be filed in the county in which the payee resides; that the payee attend the hearing on the petition unless excused for good cause; that the application include information regarding the payee, including an explanation of the reason for the proposed transfer, a summary of any prior transfers with the transferee (or affiliate) within 4 years prior to the date of the transfer agreement and any denials within 2 years, and a summary of any prior transfers by the payee with any entity within 3 years and denials within 1 year; enactment of Model Act provisions making transferee solely responsible for compliance, expressly releasing structured settlement obligors and annuity issuers and confirming that the statute may not be construed to authorize any transfer in contravention of applicable law.

Maryland

Rules of Practice and Procedure, Title 15 (Other Special Proceedings), Ch. 1300 (Structured Settlement Transfers), effective Jan. 1, 2016 (and made applicable “insofar as practicable to all actions then pending”). **Rules** require that: (1) the petition be filed in the circuit court where the payee resides; (2) the petition include a copy of the settlement agreement (filed under seal if it contains sensitive information), underlying court order(s), annuity contract, transfer agreement, disclosure(s), written consent of payee, and affidavit of independent professional advisor; (3) the petition state if the petitioner is registered to do business in Maryland and provide the name, address, email and phone number of the resident agent; (4) the petition state the names, addresses, phone numbers and emails for all interested parties; (5) the petition state if the underlying settlement arose from a claim of lead poisoning or other claim/allegation of mental or cognitive impairment of the payee; (6) the petition include information regarding prior transfers or proposed transfers and include documents from those prior matters; (7) the petition include information regarding the proposed transfer, including the annual interest rate, and whether there has been communication between petitioner and the independent professional advisor; (8) the petition be filed under oath; (9) the hearing date be no earlier than 40 days after the date of filing; (10) the petition include an “Important Court Notice” form; (11) the payee complete a “Consent” form which provides identification information, as well as information regarding employment, dependents, the underlying settlement, the independent professional advisor, and the payee’s understanding of the

transaction; (12) The independent professional advisor complete an “Affidavit” detailing the communications with the payee, their prior involvement with transfers, the fee charged, and the advisor’s investigation as to the payee’s understanding of the proposed transfer; (13) the Court hold a hearing on the proposed transfer at which the payee shall appear and testify, unless excused for good cause; (14) the independent advisor shall appear, as well as a representative of petitioner (other than the attorney); and (15) the Court make the findings required by the transfer act and IRC 5891 by a preponderance of the evidence. Amendments would further allow the Court to examine the payee and any other witness under oath and allow the Court to appoint, at the expense of the petitioner, a guardian *ad litem* or require the payee to be examined by a qualified independent mental health specialist. There are also **pending bills** in Maryland, **H.B. 535 and S.B. 734** to include certain provisions included in the amendments to Maryland’s Rules of Civil Procedure, while also requiring transferees to be registered with the Maryland Attorney General and allowing the Attorney General to intervene as a matter of right in an action to transfer structured settlement payment rights.

Virginia

S.B. 621 and H.B. 52 - Signed by Governor Terry McAuliffe on March 9, 2016, applying to transfers entered into on or after July 1, 2016; notable provisions include requirement that petition be filed in the county in which the payee is domiciled, that the payee attend the hearing on the petition unless excused for good cause, and that the application include a summary of any prior transfers with the transferee (or affiliate) within 4 years prior to the date of the transfer agreement and any denials within 2 years, and a summary of any prior transfers by the payee with any entity within 3 years and denials within 1 year.

Wisconsin

Wisc. Act 94 (A.B. 129) – Signed by Governor Scott Walker on November 11, 2015. Based on Model Act with significant variations that include required disclosure of implied interest rate; explicit requirement that petition be filed in the county in which a Wisconsin-domiciled payee resides, that the payee attend the hearing on the petition unless excused for good cause, and that the court consider, in determining whether to approve the transfer, whether the payee is delinquent in taxes, restitution, or child support.

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