National Association of Settlement Purchasers

STRUCTURED SETTLEMENT TRANSFERS: A GUIDE TO HOW THE INDUSTRY WORKS

The secondary market for structured settlements provides consumers in need with the opportunity to assign portions of their future payments in exchange for immediate funds. Without this option, people who receive structured settlements will be denied the flexibility to adapt to changing circumstances, achieve their financial goals, or use assets they already own.

1. What is the National Association of Settlement Purchasers (NASP)?

For over 20 years, the National Association of Settlement Purchasers (NASP) has been a leader in setting standards and implementing best practices in the secondary market for structured settlements. We strive to improve awareness and understanding of how this vital market works, as well as to ensure the market remains fair, competitive, and transparent.

Our work includes collaborating with judges, state legislators, the U.S. Congress, attorneys general, and other state regulators to enact and update current legislation and consumer protections in the secondary market. In 2001, for instance, NASP and other industry leaders developed the Model State Structured Settlement Protection Act, which provides a template for states to model their own structured settlement laws. The Act requires settlement purchasers to disclose the financial terms of a transaction before any contract is signed and stipulates that no structured settlement purchase is legal unless authorized by a court of law. Today, 49 states have passed settlement transfer laws requiring disclosures and court approval of structured settlement transfers.

2. What are structured settlements?

Structured settlements have played a critical role in the U.S. legal system since the 1980s. Most often used in personal injury, medical malpractice, or wrongful death cases, structured settlements offer people who have been injured a steady stream of payments over time, rather than one lump sum.

3. What is the secondary market for structured settlements?

Individuals in personal injury, medical malpractice, or wrongful death cases may elect to receive their settlement compensation in the form of a structured settlement. However, once the settlement is agreed on, the payment method cannot be changed.

This is where the structured settlement purchasing industry provides payees a vital service. For individuals facing challenges such as foreclosure, unexpected bills, or the loss of employment, the ability to tap an asset that is rightfully theirs is critical to overcoming these difficulties. In times of need, settlement purchasers offer individuals immediate access to their future stream of payments.

4. Do most people who receive structured settlements sell their future payments?

No. Most people receive payments according to the original schedule. In our experience, less than 15 percent of structured settlement recipients ever complete a secondary market transaction.

5. How does the secondary market for structured settlements work?

Individuals with structured settlements begin the process of obtaining a lump sum payment when an issue arises—such as paying unexpected bills or making a down payment on a house—that cannot be covered by their regular settlement payments, other income, or assets. In many instances, consumers contact structured settlement purchasers to assess their options.

Once contacted, structured settlement purchasers determine the present value of a structured settlement based on the share and timeframe of the settlement payments the consumer hopes to sell. Once the consumer and purchaser reach an agreement, the process of seeking court approval commences. The requirements for doing so vary by state. At the very minimum, however, purchasing companies must provide consumers with a written disclosure statement and advise consumers to seek independent financial advice.

6. What role does the court play in this process?

The court plays a key role in the secondary market process. Federal and state law require structured settlement purchases be approved by a judge, who ensures transfers are in consumers' best interests, taking into account the welfare and support of their dependent(s), and purchasers have complied with all applicable laws. Judges ultimately have the final say in whether a consumer can sell a portion of their settlement.

Judges can also set precedent that applies to future cases. For instance, in September 2015, New Jersey Atlantic County Superior Court Judge Nelson Johnson established standards for reviewing transfer applications by publishing requirements that courts should consider in structured settlement transfer proceedings.

- He defined "threshold inquiry" as an assessment of how the sale will change the payee's life for the better. According to Judge Johnson, "The court must make 'express findings' that the proposed sale is in the payee's 'best interest' by somehow improving his or her life (or addressing an urgent need)."

- "The court's obligation is much more than merely inquiring into whether the payee is competent and has voluntarily entered into the agreement with knowledge of its consequences," Judge Johnson said.

7. What federal laws regulate the secondary settlement industry?

In 2001, NASP worked with members of the National Conference of Insurance Legislators (NCOIL) and other industry players to develop and approve the NCOIL Model Structured Settlement Protection Act. The Act highlighted the need for states to create their own structured settlement protection acts (SSPAs) and provided a template for that legislation. Since enactment, NCOIL has regularly reviewed and readopted the model act to reflect industry best practices.

In 2002, President George W. Bush signed into law 26 USC 5891, which used the NCOIL Model Act to establish federal law for the secondary market. The law requires that any secondary market transaction be approved by a state court in accordance with the state's statute.

Finally, in November 2016, NASP worked with NCOIL and other industry groups to amend the NCOIL Model Structured Settlement Protection Act to:

- Update the model disclosure statement to include a provision that encourages the payee to seek professional advice when attempting to sell future payment streams.

- Specify the state court where the transfer application is to be filed, generally being a court in the county where the payee resides.

- Hold a court hearing on the proposed structured settlement transaction where the payee is required to attend in person.

- Require all proposed structured settlement transactions to include a summary of prior attempted and successful structured settlement transfers by the payee.

8. What state laws protect those selling their structured settlements?

Since the passage of the NCOIL Model Act and 26 USC 5891, 49 states have adopted some form of structured settlement protection acts (SSPAs). Although the statutes vary in their details, all of them require court review and approval of structured settlement transfers. In addition, NASP worked with lawmakers in a number of states to pass additional provisions—such as Senate Bill 458 in Florida, Assembly Bill 129 in Wisconsin, and Senate Bill 621 in Virginia—that further enhance consumer protections. These provisions vary by state but typically include the following provisions:

- Require consumers to appear in person at the court hearing while the judge evaluates their proposed structured settlement transfer.
- Mandate court proceedings be conducted and approved in the consumer's county of residence.
- Require consumers to disclose any prior structured settlement applications.

9. What principles guide NASP's work?

NASP is committed to a set of guiding principles which serve as the foundation for our organization. These include:

- Support efforts to enhance the quality and character of the industry.
- Safeguard the rights of settlement recipients to readily access their funds through an efficient and fair judicial process.
- Promote consumer choice and the flexibility of individuals to access their financial benefits when their circumstances deem appropriate.
- Improve awareness and understanding of how the secondary market operates.

10. What requirements must NASP member organizations meet?

NASP uses a stringent application process to vet potential members and ensure they abide by our guiding principles. To obtain or retain membership in NASP, firms must:

- Explain how the company finances its acquisition of structured settlements.
- Describe how the company markets its services to customers.
- Comply with all NASP standards, including using NASP's anti-fraud database, protecting confidential information, and comporting all activities with applicable law.
- Submit to any and all background checks of its owners, managers, and employees.
- Have no affiliates, owners, or employees who have been convicted of or charged with a crime, or have been the subject of a criminal action or investigation by regulatory authorities.