

# Why Is the Regulation of the Structured Settlement Secondary Market Such a Good Idea?

*By Bob Thompson*

## Choose a Funder That Can Help Answer the Question

How often does the federal government pass a law regulating our right to purchase something and get it just right? Very seldom, but in the case of the structured settlement secondary market, that happened in 2002. The subsequent passage of state laws provided specific guidance regarding the purchase of structured settlement payment streams.

The entire business is now guided by a requirement to obtain court approval of these cash flow transactions. Purchasers like Annuity Transfers, Ltd. are required to provide notice to Interested Parties, primarily the insurance companies responsible for issuing the cash flow being purchased. The Interested Parties may oppose the transaction or simply weigh in on the terms associated with the sale. A judge has full discretion to deny the proposed purchase based on its relative fairness, its economic consequences, and/or whether the seller understands the consequences of the sale. Although the seller is liquidating something just as they would a car or a house, the agreed upon price for future settlement payments is formally scrutinized by third parties designated by the law to play that critical role. These parties could potentially nix the deal. An insurance company, for example, could object and dissuade the judge from approving the transaction, or a judge could simply say “no”.

Why is this a good thing? This mandated oversight forces the funder to consider all of these potential factors when structuring the terms of the deal. Doesn't this added oversight cost time and money? Yes, but consultants should know that the prudent funder will reduce the risk of a transaction being denied by considering all of the risk factors up front. A series of questions should be asked of the seller before pushing a deal through the court approval process. Why is it important for the seller to liquidate a guaranteed source of future income? What is the positive outcome associated with receiving funds now rather than later? Does the seller know that he or she will take a substantial discount when receiving money now rather than waiting on the insurance company to make payment according to the settlement schedule?

Though this approach may sound negative, it is essentially very positive. It is important to remember the underlying circumstances associated with each

structured settlement cash flow. Future payments were awarded to a settlement recipient for a reason. The original settlement claimant was harmed in some way. They were compensated through the award of future funds. The future payment stream always had a present value. Originally the claimant accepted the future value, but now, for some good reason, they have changed their mind. *The law supports that decision.* This is why the laws governing this process are a good thing. Provided an individual understands the consequences of their decision, and has good reasons for pursuing the sale, he or she has the legal right to obtain the present value of their original award.

A supportive and knowledgeable consultant, working with a service-oriented funder, can leverage what is good about the law when describing the process to the seller. Sellers of these payments need to understand why it takes up to ten weeks to close the sale or why they will need to answer questions for a judge. The specific questions and answers are all positive, but there is one easy answer: *You, the seller, are protected by the law. You have nothing to worry about.*

The partnership between a consultant and a funder should promote, rather than complain about, legal requirements. Ultimately we want the structured settlement payee to agree to the sale of his or her payments. What better way to help convince that person than through a detailed description of the process and the law, all of which exists to protect the seller. A detailed description, including all potential pitfalls, *prepares* the seller. *Good preparation always wins out over a good story.* Of course, that presupposes that the funder, working with the consultant, knows what they are talking about and has real experience with insurance companies, judges, and the court system in general. Information provided for the benefit of the seller will ultimately benefit the funder, leading to faster closings and consultant income.

Annuity Transfers, Ltd. and I look forward to returning as presenters at this year's American Cash Flow Convention in San Francisco. The topic will be "Structured Settlements: Wading Through The \*({\&!@)#!" We will present a long list of important details associated with the structured settlement cash flow and discuss in detail how those details may be used to your advantage when working with a funding source. Don't miss it!