WEST VIRGINIA CODE: §46a-6H-3

§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

(a) In addition to the requirements of this article, all transfer agreements must be approved by the circuit court of the county wherein the consumer resides or where the structured settlement agreement was executed when the structured settlement payment rights arise from a personal injury or other claim.

(b) The transferee shall commence the action by filing a petition with the court seeking approval of the transfer and providing to the court the disclosure statement required by subsection (a), section two of this article.

(c) The circuit court shall set a time and date for a hearing on the matter within twenty-one days of the date of the filing of the petition. The transferee shall notify the consumer and all interested parties of the date and time of the hearing and provide them with a copy of the petition.

(d) The court may appoint a guardian ad litem for the consumer in all cases, and shall appoint a guardian at litem for the consumer in any case where the structured settlement payment rights belong to an infant, an incompetent person or a ward of the court. The guardian ad litem shall review the requisite disclosures and make an independent inquiry to determine whether the proposed transfer is fair, reasonable and in the best interests of the consumer and any dependents of the consumer as well and determine if transfer has been attempted or accomplished before. The information shall be reported to the court during the hearing on the matter.

(e) An interested party has the right to appear and contest the proposed transfer at the time of the hearing. If, after proper notice, the interested party does not make an appearance, then the interested party shall be bound by the court's ruling.

(f) After a hearing or upon its own motion, the court may approve the transfer if the court finds that:

(1) The consumer has clearly demonstrated that: (A) He or she, or his or her family is facing a financial hardship that the transfer would alleviate and that the transfer would not subject the consumer or the consumer's family to undue financial hardship in the future; or (B) the transfer is in the best interest of the consumer: Provided, That the judge shall inquire of the guardian ad litem and the transferee as to possible adverse tax consequence to the consumer and inform the consumer of the result of said inquiry;

(2) The transferee is in compliance with the provisions of section two of this article; and

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(3) The transfer agreement does not contravene the terms of the structured settlement agreement, including any restrictions on the right of the consumer to transfer his or her structured settlement payment rights, unless the annuity issuer and structured settlement obligor have consented to the transfer. However, the approval of the annuity issuer and the structured settlement obligor shall not be required if, at the time the consumer and the transferee entered into the transfer agreement, a favorable tax determination was in effect.

(g) The court shall award the guardian ad litem reasonable fees for representing the consumer. Attorneys' fees and costs shall be paid by the transferee.

(h) A consumer may request court approval for a transfer that does not mandate court approval under this section. Such voluntary petition by the consumer shall then become subject to the provisions of this section. The transferee shall be responsible for filing the action pursuant to subsection (b) of this section and shall be responsible for attorney's fees or guardian ad litem fees.

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