



Structured Settlement Annuities: Protection from Creditors, Bankruptcy & Divorce

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Oftentimes the protection that structured settlement annuities are afforded under the law in terms of judgments and creditor claims is overlooked when analyzing whether to implement one. However, this feature is very important for injury victims who need to protect their recovery. Injury victims only get one opportunity to recover for their injuries. If someone who recovers for their injuries is subsequently involved in an accident where they injure someone else or someone is injured on their property, bank accounts and most investments are exposed to claims. In addition, if an injury victim gets into debt and has creditors making claims, their assets could be exposed to these claims.

However, many states have either common law or statutes that protect annuities from legal process. For example, in Florida there is a statute¹ that completely exempts annuities from creditors and judgments. This statute gives injury victims an option to completely protect their settlement proceeds from judgments or creditor claims by entering into a structured settlement annuity as part of their settlement. That statute has been interpreted by Florida courts² to defeat judgment creditor claims against structured settlement annuities.

In addition, structured settlements offer enhanced protection in case of divorce or bankruptcy. Structured settlements are not owned by the injury victim. Instead, the injury victim is the payee and the life insurance company's assignment company owns the annuity. When a structured settlement is created as part of a settlement an assignment is done. The assignment is done to transfer ownership of the annuity from the purchaser, the defendant, to the life company assignment corporation. The assignment corporation takes on the obligation to make the future periodic payments and purchases an annuity from the annuity issuer. Because of this legal arrangement, structured settlement annuities are not an asset owned by an injury victim. Consequently, it is not an asset that can generally be divided in the case of divorce.³ The income that it produces can be considered in determining alimony, but the asset itself usually is not divided.⁴ Similarly, a structured settlement annuity is not an asset generally reachable in cases of bankruptcy.⁵

Conclusion

Given the safety and security structured settlement annuities provide they should be considered as part of any sound financial plan for an injury victim. The enhanced protection from judgments (including divorce), creditors and bankruptcy enjoyed by structured settlement annuities makes them an important planning tool for injury victims to safeguard their settlement proceeds. Before deciding to not structure a settlement, careful consideration should be given to these protections and the value they provide to safeguard an injury victim's recovery. An experienced settlement planner can help provide advice on all of these issues and provide information about the benefits of a properly created structured settlement plan.

¹ Florida Statute 222.14 - **Exemption of cash surrender value of life insurance policies and annuity contracts from legal process:** The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

² See Windsor-Thomas Group Inc. v. Parker, 782 So.2d 478 (Fla. 2d DCA 2001). Judgment creditor brought action to garnish annuity that funded structured settlement of tort case in favor of the judgment debtor. The **issuer** moved to quash the writ based on the statutory prohibition that annuity contracts are not liable to attachment, garnishment, or legal process in favor of any creditor. The Circuit Court dissolved the writ. Creditor appealed. The District Court of Appeal held that the issuer had standing to raise the statutory prohibition against garnishment.

³ See generally Krebs v. Krebs, 435 N.W.2d 240 (Wis. 1989)

⁴ See generally Ihlenfeldt v. Ihlenfeldt, 549 N.W.2d 791 (Wis. App. 1996)

⁵ See In re McCollam, 612 So.2d 572 (Fla. 1993). Annuity was exempt under Florida Statute 222.14 from creditor claims in bankruptcy action. See also In re Orso, 283 F.3d 686 (5th Cir. 2002) (holding structured settlement "annuity contracts under which payments were owed came within scope of Louisiana statute exempting such contracts from the claims of creditors"); In re Belue, 238 B.R. 218 (S.D. Fla. 1999) (holding "debtor who was named, as payee and intended beneficiary, under annuity purchased by insurance company to fund its obligations under structured settlement agreement was entitled to claim annuity payments as exempt under special Florida exemption for proceeds of any annuity contracts issued to citizens or residents of state . . ."); In re Alexander, 227 B.R. 658 (N.D. TX 1998) (holding structured settlement annuity paid to debtors following the death of their children in automobile accident was entitled to exemption as an annuity under Texas law).