

The Impact of Bankruptcy on Structured Settlements

By Bruce W. Akerly

One of the frequently emphasized benefits of structured settlements is bankruptcy protection. Because you do not own the annuity, creditors may not claim it in bankruptcy. However, this protection is not that simple.

When preparing a schedule of assets for a bankruptcy filing, structured settlement payment rights must be properly and completely disclosed. This includes (a) all payments, whether guaranteed or life contingent, (b) near-term payments and (c) payments that may not be due for many years. It includes monthly, annual, lump sum and all other forms of payments.

In most states, structured settlement payments are listed on Schedule B (personal property) and Schedule C (exempt property). A debtor must identify the payments as exempt to claim them as exempt; otherwise, the trustee or the creditors may seek to treat them as property of the bankruptcy estate.

If a debtor fails to identify structured settlement payments in his/her bankruptcy schedules, then, once discovered, the case may be re-opened to allow the trustee to administer the payments, notwithstanding the granting of a discharge in bankruptcy, and payments that had been paid in the interim period may be required to be returned to the bankruptcy estate. Furthermore, the debtor risks having the bankruptcy discharge set aside.

Finally, how structured settlement payments are valued in your schedules is part art and part science. Schedules of assets, including structured settlement payments (whether exempt or not) must place a value on the asset. The value can be present value or future value. There are no hard and fast rules. A too low value attributed to a payment stream that covers many years may raise questions. The bottom line is to make sure your clients are aware of these issues and seek professional advice should the annuitant consider or decide to file for bankruptcy.

A structured settlement is designed to protect you, and in case of bankruptcy, you need to make sure you in turn have protected it.

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