



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

September 25, 1998

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 98-016

FEES:  
Change of Beneficiary of  
Structured Settlement

The Honorable Gary W. Pack  
State's Attorney, McHenry County  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire regarding the proper fee to be charged by the circuit clerk for the filing of a petition to change the beneficiary of a structured settlement. For the reasons hereinafter stated, it is my opinion that the appropriate fee may be that fixed for initiating a civil action, for filing a petition to modify a judgment or for settling an action or claim in a probate proceeding, depending upon the nature of the proceeding, if any, upon which the original structured settlement was predicated.

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Public Act 90-303, effective January 1, 1998, amended the Illinois Insurance Code by adding thereto new section 155.31 (to be codified at 215 ILCS 5/155.31), which provides:

"Structured settlements.

(a) No insurance company may make payments on a structured settlement of a claim for personal injury to anyone other than the beneficiary of the settlement without prior approval of the circuit court of the county where an action was or could have been maintained.

(b) No person who is the beneficiary of a structured settlement of a claim for personal injury may assign in any manner the payments of the settlement without prior approval of the circuit court of the county where an action was or could have been maintained."

The Act did not, however, establish a specific fee for the filing of a petition to approve a change of beneficiary.

The fees of circuit clerks in counties having in excess of 180,000 but not more than 650,000 inhabitants (including McHenry County) are set forth in section 27.1a of the Clerks of Courts Act (705 ILCS 105/27.1a (West 1997 Supp.)) which provides, in part:

"The fees of the clerks of the circuit court in all counties having a population in excess of 180,000 but not more than 650,000 inhabitants in the instances described in this Section shall be as provided in this Section. The fees shall be paid in advance and shall be as follows:

(a) Civil Cases.

The fee for filing a complaint, petition, or other pleading initiating a civil action \* \* \* shall be \$150.

\* \* \*

(g) Petition to Vacate or Modify.

(1) Petition to vacate or modify any final judgment or order of court, except in forcible entry and detainer cases and small claims cases or a petition to reopen an estate, to modify, terminate, or enforce a judgment or order for child or spousal support, or to modify, suspend, or terminate an order for withholding, if filed before 30 days after the entry of the judgment or order, \$40.

(2) Petition to vacate or modify any final judgment or order of court, except a petition to modify, terminate, or enforce a judgment or order for child or spousal support or to modify, suspend, or terminate an order for withholding, if filed later than 30 days after the entry of the judgment or order, \$60.

\* \* \*

(v) Probate.

The clerk is entitled to receive the fees specified in this subsection (v), which shall be paid in advance, except that, for good cause shown, the court may suspend, reduce, or release the costs payable under this subsection:

\* \* \*

(G) For disposition of the collection of a judgment or settlement of an action or

claim for wrongful death of a decedent or of any cause of action of a ward, when there is no other administration of the estate, \$30, less any amount paid under subsection (v) (1) (B) or (v) (2) (B) except that if the amount involved does not exceed \$5,000, the fee, including any amount paid under subsection (v) (1) (B) or (v) (2) (B), shall be \$10.

\* \* \*

"

As you have noted, depending upon the particular circumstances, any one of these three subsections might be applicable to a petition to change the beneficiary of a structured settlement. If the structured settlement is part of a final judgment or order of the court, then the fees fixed in subsection 27.1a(g) would be applicable to a petition to modify that judgment or order. If the structured settlement is part of a probate estate, then the fees set forth in subsection 27.1a(v) would apply to the petition to change the beneficiary. You have asked specifically whether a petition to change the beneficiary of a structured settlement, which was not predicated upon any other action, constitutes a petition initiating a civil action, the fee for the filing of which would be that fixed in subsection 27.1a(a) of the Act.

The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent.' (Stewart

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v. Industrial Comm'n (1987), 115 Ill. 2d 337, 341.) The words used in a statute are to be given their ordinary and popularly understood meaning. (Kozak v. Retirement Board (1983), 95 Ill. 2d 211, 215.) Where the language of a statute is insufficient to determine the intent of the legislature, one may look to such extrinsic sources as the statute's legislative history. People ex rel. Hartigan v. Moore (1986), 143 Ill. App. 3d 410, 414-15.

Representative Leitch, the sponsor of House Bill 1410, which was enacted as Public Act 90-303, obviously contemplated that the initiation of an action and the payment of a fee could be required for the approval of a change in beneficiaries pursuant to the sale of a structured settlement. During debate on the legislation, the following colloquy occurred:

" \* \* \*

Lang: '\* \* \* Under the way the Bill is drafted, if I want to sell my structured settlement to my sister for a reasonable sum of money, I couldn't even do that.'

Leitch: 'You can do that.'

Lang: 'With a court order, which requires me to pay a fee, get a lawyer, go to court, open a case. Is that what we really want to do?'

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Leitch: 'That's what I want to do.'

\* \* \*

"

(Remarks of Reps. Lang and Leitch, April 10, 1997, House Debate on House Bill No. 1410, at 4.)

Since no specific fee was provided for in the amendment, it must be assumed that application of the general fee statute was intended. The amendment did not, however, address which fee should be applied.

The term "civil action" is not defined in the Clerks of Courts Act. The term "action" is a generic term, and when used in a broad and comprehensive sense, as it is in this instance, it has been deemed to mean the pursuit of a right in a court of justice without regard to the form of the legal proceedings, and to apply to any of the various proceedings ordinarily allowed for the enforcement of a right. (1A C.J.S. Actions § 3, 306-07; see also Webster's Third New International Dictionary (unabridged), 21 (1981).) In this sense, a petition seeking authority to change the beneficiary of a structured settlement would properly be considered a "civil action", for purposes of section 27.1a(a) of the Clerks of Courts Act.

Applying these principles, it is my opinion that the General Assembly intended for the filing of a petition to change a beneficiary of a structured settlement, as required by Public

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Act 90-303, when not filed as part of an existing proceeding, to be considered the initiation of a civil action, for the purpose of determining filing fees. Therefore, when a petition is filed which is not related to any existing action in the courts, the requisite fee for filing the petition is that fixed for filing a civil action under subsection 27.1a(a) of the Clerk of Courts Act.

Sincerely,



JAMES E. RYAN  
ATTORNEY GENERAL