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# THE B&B ALERT

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April 18, 2008

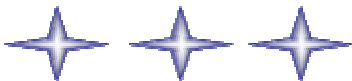
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## ***DESIGNING A STRUCTURED SETTLEMENT*** ***By Thomas D. Begley, Jr., Esquire***

In designing a structured settlement, there are a number of features that warrant careful consideration.

- **COLA.** In designing a structured settlement, consideration should be given to providing a cost of living adjustment (COLA) to provide for future cost of living increases. Historically, inflation has run an average of 3% per year. Financial advisors use something called “the rule of 72’s.” To determine how long it will take money to double, divide the rate of return into the number 72. For example, if a person receives a 6% rate of return on an investment, it will take 12 years to double the money. The converse would seem to apply to the structured settlement. It is anticipated that there will be a 3% inflation rate over time. Divide 3 into 72 and it will take 24 years for the monthly payments to lose half of their purchasing power. Therefore, a 3% cost of living increase should be built in to a structured settlement in order to preserve purchasing power. This will reduce the initial payments, but will give the injured party constant purchasing power over the life of the contract.
- **POPs.** A structure can also be designed to provide lump-sum payments at appropriate intervals, such as at age 18 when monies may be needed for college education, if appropriate. Anticipated future needs can be met in this manner. A POP is a lump-sum distribution in an amount certain at a previously agreed upon time.

- *Lifetime Payments or Fixed Term.* In many situations, the injured plaintiff has a permanent disability and will not be able to work. In those situations, it is important to obtain a structured settlement that will pay the injured person or the special needs trust for the life of the disabled person. Since tomorrow is never guaranteed, it is usually wise to obtain a guarantee period where payments will continue even after the death of the injured person. Plaintiff names a beneficiary on the contract to receive the guaranteed payments. The addition of the guarantee period will reduce the amount of the periodic payment, but elimination of the risk is usually seen as worth the price when discussing the structure with the client.
- *Deferred Payment.* In cases involving a minor, the payments from the structured settlement may not be required until at time in the future such as age 18. During the meantime, the parents often provide what support the minor child will need. By deferring payment for a period of time, the funds in the structured settlement annuity can build up and the periodic payments starting at the agreed upon time will be significantly higher. The longer the payments are deferred, the larger the periodic payments will be.
- *The Beneficiary.* Who should be the beneficiary of the structured settlement on death of the beneficiary of the trust? If the beneficiary of the structure is the trust, the balance of the payments will be used to repay Medicaid. There appears to be no restriction in federal law on naming a family member as contingent beneficiary of the guaranteed portion or a structure upon the death of the primary beneficiary of a structure, however, state law must be consulted. The Supreme Court of New York held that there is no authority to consider any guaranteed payment remaining after the death of the trust beneficiary from the trust assets subject to the State's remainder interest.<sup>[1]</sup> This would have the effect of avoiding a payback to Medicaid since the structure would then be paid to the family member and not to the trust. Only assets remaining in the trust would be required to be paid to Medicaid. The guaranteed portion of the future payment would be includable in the estate of the deceased beneficiary. Consideration should be given to purchasing a commutation rider from the insurance company to provide for funds to pay the federal estate tax.



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Begley & Bookbinder is please to announce that we have added our Preferred Client Program Video to our website. To view please visit our website at [www.begleylawyer.com](http://www.begleylawyer.com).

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<sup>[1]</sup> IMO Eddie Sanango, Supreme Court of New York, County of Kings, Index No. 41383/94 (Oct. 22, 2002).

## Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

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### Begley & Bookbinder

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The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

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