

Dutch Civil Code

Book 7 Particular agreements

Title 7.15 Settlement agreement

Article 7:900 Definition of 'settlement agreement'

- **1.** Under a settlement agreement parties bind themselves towards each other, in order to end or to avoid any uncertainty or dispute about what applies to them legally, to the assessment and establishment of a new legal status between them, intended to apply as well as far as it differs from their previously existing legal status.
- **2.** The assessment and establishment of their new legal status can be made by virtue of a joint decision of the involved parties or by virtue of a decision of one of them or of a third party.
- **3.** An agreement on evidence is equated with a settlement agreement as far as it brings along an exclusion of evidence in rebuttal.
- **4.** The present Title (Title 7.15) does not apply to an arbitration agreement.

Article 7:901 Requirements for the establishment of the new legal status

- **1.** The establishment of the new legal status is subject to the requirements which have to be met in order to accomplish the intended new legal status in accordance with the law, starting from the legal status of which it may differ.
- **2.** Each of the parties is towards the other obliged to perform all what is necessary from his side to meet the requirements for accomplishing the establishment of the new legal status.
- **3.** As far as it is possible to meet these requirements by means of a declaration of parties or of one of them, this declaration is regarded to be enclosed in the settlement agreement, unless this agreement provides otherwise.

Article 7:902 Establishment in conflict with mandatory law

The establishment of a new legal status in order to end any uncertainty or dispute on the field of property law is also valid if it would appear to be in conflict with mandatory law, unless its content or necessary implications are in conflict as well with public morals or public order.

Article 7:903 No retroactive effect towards third persons

As far as the establishment of the new legal status is related to what must be regarded as the correct legal situation in the past, it cannot affect any rights acquired by third persons in the meantime.

Article 7:904 Conflict with reasonableness and fairness; absence of a valid determination

- **1.** An assessment made by one of the parties or a third party is voidable if its binding force, in view of its content or the way in which it was made, would in the given circumstances be unacceptable according to standards of reasonableness and fairness.
- **2.** When an assessment is nullified or when it appears to be null and void from the start or when no assessment is made within a reasonable period set for this purpose to the party entrusted with the task

to decide on the matter, the court may assess the legal status between parties, unless the settlement agreement or the nature of the assessment indicates that it must be replaced in another way.

Article 7:905 Rescission and dissolution of the settlement agreement

If a rescission of the settlement agreement on account of a failure in the performance thereof would affect an already made assessment by one of the parties or a third party, then this rescission cannot take place by means of a one-sided declaration and, when the dissolution of the settlement agreement is claimed in court, the court may reject this claim on the ground that the party claiming the dissolution has sufficient means to obtain the undoing of or a compensation from the other party for the negative consequences of this party's failure in the performance

Article 7:906 Application of the statutory provisions of Title 7.15 to similar legal grounds

- **1.** The statutory provisions of the present Title (Title 7.15) apply accordingly to an assessment and establishment of a legal status that are based on another legal ground than an agreement.
- **2.** Article 7:904 applies accordingly when one of the parties to a legal relationship or a third party has been given the right to supplement (add) or modify (change) the rules applying to that legal relationship.
- **3.** Paragraph 2 does not apply to a supplementation (addition) or modification (change) resulting from a decision of a body of a legal person if this decision is in conflict with the standards of reasonableness and fairness according to Article 2:15 of the Civil Code.
- **4.** Paragraph 1 and 2 do not apply as far as the necessary implications of the concerned statutory provision in connection with the nature of the legal relationship opposes against such application.

Article 7:907 Agreement on a financial settlement of mass damages debt-claims

- **1.** An agreement for the purpose of compensating damage caused by an event or by similar events, concluded between a foundation or association with full legal capacity and one or more other parties who have engaged themselves under this agreement to pay compensation for this damage may, upon the joint request of the parties that concluded the agreement, be declared binding by the court for other persons to whom the damage was caused, provided that the foundation or association represents the interests of these persons pursuant to its articles of association (articles of incorporation). Persons to whom the damage was caused, shall be deemed to include persons who have acquired a debt-claim with respect to that damage under universal or particular title.
- **2.** The agreement must in any case include:
 - a.** a description of the group or groups of persons on whose behalf the agreement was concluded, according to the nature and the seriousness of their loss;
 - b.** the most accurate indication possible of the number of persons belonging to the group or groups;
 - c.** the compensation that will be awarded to these persons;
 - d.** the conditions which these persons must meet to qualify for the compensation;
 - e.** the procedure by which the compensation will be established and can be obtained;
 - f.** the name and domicile of the person to whom the written notification referred to in Article 7:908, paragraph 2 and 3, can be sent.
- **3.** The court shall reject the request if:
 - a.** the agreement does not comply with the provisions of paragraph 2;
 - b.** the amount of the compensation awarded is not reasonable having regard, inter alia, to the extent of the damage, the ease and speed with which the compensation can be obtained and the possible causes of the damage;
 - c.** insufficient security is provided for the payment of the debt-claims of persons on whose behalf the agreement was concluded;

- d.** the agreement does not provide for the independent assessment of the compensation to be paid pursuant to the agreement;
 - e.** the interests of the persons on whose behalf the agreement was concluded are otherwise not adequately safeguarded;
 - f.** the foundation or association referred to in paragraph 1 is not sufficiently representative with regard to the interests of persons on whose behalf the agreement was concluded;
 - g.** the group of persons on whose behalf the agreement was concluded is not large enough to justify a declaration by the court that the agreement is binding;
 - h.** there is a legal person who will provide the compensation pursuant to the agreement and he is not a party to the agreement.
- **4.** Before making a decision, the court may give the parties the opportunity to add further contractual provisions to the agreement or to change its content.
 - **5.** The request referred to in paragraph 1 shall interrupt the prescription period for any right of action for compensation of damage against the persons who are party to the agreement to the extent that the agreement provides for compensation for this damage. If the request has been granted irrevocably (final and binding), a new prescription period shall commence at the start of the day following the one on which the definitive decision is made on the compensation to be awarded. A new prescription period shall also commence at the start of the day following the one on which the notification referred to in Article 7:908, paragraph 2, has been given. If the request is not granted, a new prescription period shall commence at the start of the day following the one on which this judicial decision has become irrevocable (final and binding). If the agreement is terminated pursuant to Article 7:908, paragraph 4, a new prescription period shall commence at the start of the day following the one on which such a termination takes place pursuant to that paragraph. Article 3:319, paragraph 2, of the Civil Code shall be applicable.
 - **6.** The agreement may provide that a right to compensation pursuant to the agreement shall expire if a person entitled to compensation has not claimed the compensation within a period of at least one year after the day following the one on which he became aware that his right on payment of the compensation is due and demandable.

Article 7:908 Legal effect of an agreement which is declared binding by the court

- **1.** As soon as the request for a declaration that the agreement is binding, has been granted irrevocably (final and binding), the agreement referred to in Article 7:907 shall, as between the parties and the persons entitled to compensation, have the effect of a settlement agreement in the meaning of Article 7:900, to which each of the persons entitled to compensation are regarded to be a party.
- **2.** The declaration that the agreement is binding shall have no consequences for a person entitled to compensation who has notified the person referred to in Article 7:907, paragraph 2, under point (f), in writing, within a period to be determined by the court of at least three months following the announcement of the decision referred to in **Article 1017 paragraph 3** of the Code of Civil Procedure, that he does not wish to be bound by the agreement. [**See also Book 3 Code of Civil Procedure, Title 14 Class actions**]
- **3.** A declaration that the agreement is binding shall have no consequences for a person entitled to compensation, who could not have known of his loss (damage) at the time of the announcement referred to in paragraph 2 if, but who has notified, after becoming aware of his loss (damage), the person referred to in Article 7:907, paragraph 2 under point (f), in writing of his wish not to be bound by the agreement. A party that has engaged himself under the agreement to pay compensation for damage may give a person entitled to compensation as referred to in the first sentence notice in writing of a period of at least six months within which that person can state that he does not wish to be bound by the agreement. This notice shall also state the name and the domicile of the person referred to in Article 7:907, paragraph 2, under point (f).

- **4.** A stipulation releasing a party to the agreement from an obligation, to the disadvantage of the persons entitled to compensation, is null and void after a declaration of the court that the agreement is binding, unless it gives the parties who have engaged themselves under this agreement to pay the compensation, the joint power to terminate the agreement no later than six months after the expiry of the period to be determined by the court referred to in paragraph 2, because the declaration that the agreement is binding affects too few of the persons entitled to compensation. In that case, termination shall be effectuated by an announcement in two newspapers and by means of a written notification to the foundation or association referred to in Article 7:907, paragraph 1. The parties who have terminated the agreement shall ensure that a written notice of termination is sent as soon as possible to the known persons entitled to compensation, for which purpose the parties may use the last known domicile of the persons entitled to compensation.
- **5.** Once the agreement has been declared binding, the parties who concluded the agreement may not invoke the grounds for nullification referred to in Article 3:44, paragraph 3, and Article 6:228 of the Civil Code, and a person entitled to compensation may not invoke the ground for nullification referred to in Article 7:904, paragraph 1.

Article 7:909 The court's power to give a decision on the compensation

- **1.** When, pursuant to the agreement, a definitive decision has been taken about the compensation which is due to a person entitled to it, this decision has binding force. If, however, this decision or the procedure by which it was reached is unacceptable according to standards of reasonableness and fairness, the court has the power to give a decision on the compensation.
- **2.** If no decision is given on the awarding of compensation within a reasonable stipulated period, the court has the power to give a decision on the compensation.
- **3.** Once the agreement has been declared binding, the foundation or association referred to in Article 7:907, paragraph 1, may demand performance of the agreement on behalf of a person entitled to compensation, unless that person objects to this.
- **4.** The person entitled to compensation shall not receive compensation pursuant to the agreement if this would place him in a clearly more advantageous position.
- **5.** If the party or the parties who have engaged themselves under the agreement to provide compensation for damage can meet their obligations under the agreement by payment of an amount stipulated in the agreement, and if it emerges that the total amount of outstanding compensation claims exceeds the total amount to be contributed, the subsequent outstanding debt-claims shall be reduced, pro rata, to the amount still remaining. Depending on factors such as the nature and seriousness of the damage, the agreement may include a different method of reduction than the method prescribed in the first sentence. The payment of an outstanding debt-claim may be suspended if, in connection with the provisions of the first and second sentences, there are reasonable grounds for doubt as to what amount must be paid.

Article 7:910 Other debtors who are joint and several liable; distribution of a remaining sum

- **1.** If other debtors, besides the party or parties who have engaged themselves under the agreement to compensate the damage, are joint and several liable for the same compensation, Article 6:14 of the Civil Code applies accordingly. Subject to evidence of a contrary intention, the agreement shall be deemed to include also a clause as referred to in that statutory provision.
- **2.** If the party or parties who have engaged themselves under the agreement to compensate the damage have complied with their obligations under the agreement through payment of an amount stipulated in the agreement and, after the persons entitled to compensation have received payment, there is a sum remaining, this party or these parties may jointly request the court which declared the agreement binding to order the person managing this remaining sum to pay it to the party, or if there is

more than one party, to each party in proportion to their respective contributions. The court shall deny the request if it is not established to the court's satisfaction that all persons entitled to compensation have been paid.