

Insuring Divorce Settlement and Child Support Payments Against Disability

Coordinating the Divorce Decree and Disability Policy

Coordinating the Divorce Decree and Disability Policy to Achieve Desired Results

If the policy is purchased during the time the settlement is negotiated, the decree can include language related to the rights of both parties if the Divorce Settlement Disability Policy does pay benefits or does not pay benefits.

- If the Recipient is the beneficiary of the insurance payments, does this satisfy the Payor's obligation to pay? If so, then language to that effect should be written into the decree. Otherwise, the Payor could be forced to petition The Court for relief, due to a "Change in Circumstances", even though the Recipient is receiving the insurance benefits.
- If the Payor is the beneficiary, then the Payor can continue to pay the Recipient under the terms of the divorce decree. However, it might make sense to include language in the decree stating the Payor will not request a reduction in his/her obligation if 100% of the stipulated payments are made by the Divorce Settlement Disability Policy and satisfy his/her total obligation to the Recipient. Otherwise, the Payor could request a reduction in the payments based on a "Change in Circumstances" and, if The Court approved it, keep the Disability Benefits for his/her own use. This type of language should allow the Payor to request a reduction in his/her obligation to pay only if the policy was not covering 100% of what was stipulated.
- If the claim is denied by the insurance company and no benefits are payable, the decree can stipulate the Payor's obligation to pay continues. Keep in mind, if the insurance company denies the claim it can be for one of several reasons:
 1. The condition causing the disability is specifically excluded from coverage. Example: The policy does not insure disabilities caused by mental and nervous disorders or substance abuse.
 2. The disability was caused by a preexisting condition and occurred during the 12 month preexisting conditions exclusion period.
 3. The condition causing the disability was excluded from coverage because of medical underwriting. Example: The Payor had a heart attack 5 years prior to applying for coverage and the policy was issued with a wavier excluding any disabilities caused by a heart or circulatory problems.
 4. The insured is claiming to be disabled but does not have medical documentation to support the claim and the insurance company denies the claim.

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- If the policy limits benefits (i.e. doesn't insure spousal support or is issued for less than the full spousal support payment), or has a maximum stated benefit for certain stipulated expenses (i.e. expenses that vary in amount and/or frequency, like activity expenses), the decree could state:
 1. whether or not the Payor can or cannot file for a "Change in Circumstances" to have those expenses not covered by the policy reduced or eliminated during a total disability where the policy is paying benefits, or
 2. the policy benefit satisfies the Payor's obligation to pay all stipulated payments, if totally disabled and the claim is approved.

This scenario doesn't make sense where the Payor **elected** NOT to insure a specific expense (i.e. spousal support). It does make sense where the Policy sets a level benefit to cover variable expenses (i.e. \$1,000 per month for activity expenses) or child support went up a small amount but the policy benefit was not increased.

- The policy pays a lump sum benefit that can include significant amounts of money for future expenses. If the Payor wants the lump sum benefit payable to a trust for the minor children, it needs to be stated in the divorce decree and the policy's lump sum benefit assigned to the trust. However, since the lump sum benefit reduces each month the Payor pays the monthly obligation, it makes sense to require a minimum benefit if the lump sum benefit is going to be payable to a trust. There's no reason to incur the cost of setting up a trust for a small amount of money.
- The policy is renewable every 5 years. So, the settlement can contain language stipulating the Payor will apply for renewal of the policy when required and cooperate with all underwriting requirements to obtain the renewal.
- The decree can stipulate that whoever is paying the premiums on the policy will do so as long as the policy is in force and the obligations stipulated by the decree continue.

What if the Divorce Decree is NOT Coordinated with the Disability Policy?

This can happen when the Payor is uncooperative, so the Recipient buys, pays for, and is the beneficiary of the benefits and nothing is written into the divorce decree, or the policy is purchased after the decree is finalized.

Example:

The Recipient buys coverage on the Payor and pays 100% of the premium because the Payor refuses to participate in the cost of the coverage. If the Payor is totally disabled the Payor would have to go to court and request The Court remove his/her obligation to pay because of a "Change in Circumstances". Otherwise, the obligation to pay still exists.

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The fact the Recipient chose to buy and pay for coverage insuring the Payor's obligations against disability and is collecting benefits doesn't guarantee The Court will waive the Payor's future obligations, especially if the Payor refused to pay part of the premium. This is why we prefer the divorce decree include language specifying both Parties rights and obligations, if a policy is purchased by either party. However, this is NOT a requirement to obtaining coverage.

If both parties were agreeable to the purchase of the policy after the decree was finalized and shared in the premium cost, they could either file an addendum to the decree stipulating their rights and benefits or "trust" if there was a claim the Recipient would agree the policy satisfied the Payor's obligation to pay.

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To the best of our knowledge, this summary illustrates how the insurance company administers the portion of definitions described. The actual definitions written in the contracts issued by the carrier will determine how benefits are actually paid. The definitions and carrier interpretations take precedence over any representations made in this proposal.