

# Insuring Divorce Settlement and Child Support Payments Against Disability

## The Financial Impact of the Payor Being Disabled

Until now, there hasn't been an affordable or practical way to ensure divorce settlement payments continue if the Payor becomes disabled. Before we discuss the solution to this problem, it's important to understand the impact of a disability on both the Payor and the Recipient. The problems are not as obvious as they may seem and most of the solutions being used today leave both the Payor and Recipient at risk.

We will refer to **divorce settlement payments** throughout this document. Divorce settlement payments refer to all payments the Payor is required to make, as stipulated by the divorce decree (e.g., spousal support, child support, private school tuition, college costs, medical insurance premiums, activity fees and expenses, etc.).

- If the Payor becomes disabled, which is 3 times more likely than dying prior to age 65, the best case scenario is the Payor has some type of disability income coverage.
  1. Some decrees write in disability provisions requiring the Payor to continue paying a percentage of the spousal support or a percentage of the disability income benefits to the Recipient.
  2. Many divorce decrees do not address what happens if the Payor is disabled. This results in the Payor having to file for a "change in circumstances."

*If the Payor becomes disabled, it ranges from difficult to impossible to continue divorce settlement payments to the Recipient on top of paying his/her own bills. So, the Payor is forced to try and modify the divorce settlement payments.*

### Child Support:

Child support is determined by a formula, in each state, that takes into account the income of both parents. Disability Insurance would count as income if the Payor is disabled.

- If either parent's income goes up or down, the Payor's payments can be changed by applying to the state for an adjustment based on current income. So, if the Payor's income is reduced or eliminated because of a disability, the Payor can apply to the state for a reduction in child support payments and the payments will be lowered accordingly.

While this is financially devastating to the Recipient and children, any ongoing payments also put enormous financial strain on the Payor who is trying to pay his/her own bills out of disability insurance benefits (assuming there are any), while dealing with a serious medical issue.

### Spousal Support and Other Settlement Obligations

Some divorce decrees address how payments will be made if the Payor is disabled.

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## Actual Case Study:

- The Payor was a physician earning \$35,000 per month.
- The Payor had \$10,000 per month of disability benefits.
- If the Payor is totally disabled from practicing as a physician, the divorce decree required the Payor to pay the Recipient 25% of the disability benefit plus 25% of any earnings (if working in an occupation other than a physician), not to exceed \$10,000 per month. So, if the Payor is totally disabled and not working in another occupation:
  1. The Payor's income is reduced from \$35,000 per month to \$7,500 per month.
  2. The Recipient's spousal support is reduced from \$10,000 per month to \$2,500 per month.

**This is a financially devastating outcome for both parties.**

*No matter what terms the divorce decree incorporates to deal with the disability of the Payor, the Payor, the Recipient, and the children are going to suffer financially.*

## What if the divorce decree does NOT stipulate what happens if the Payor is disabled?

If the Payor is disabled, the only way the Payor can reduce the payments stipulated by the decree is file for a **change in circumstances**. This has been the standard used by the attorneys representing the Payor because there have been no viable alternatives.

Below is the ugly, expensive and stressful reality of going through a change in circumstances trial.

- The Payor has suffered a major health issue which has totally disabled the Payor from his/her regular occupation. The Payor is in no condition, physically or mentally, to deal with the stress of going back to court and renegotiating the settlement agreement, which is what happens during a change in circumstances trial.
- Even if the Payor has disability income insurance, the **best** disability programs only insure 60% of the insured's earnings. With a 40% income reduction, the Payor will have serious issues trying to pay his/her own expenses. As described in the case study above, being required to continue part or all of the divorce settlement payments will turn the Payor's financial issues into a financial crisis.
- Whether or not the Payor has personal or employer provided disability insurance, the Recipient's attorney is going to file for discovery hoping to find other resources that can be used to pay spousal support.
  1. The Payor will have to produce onerous amounts of documentation validating his/her financial and medical situation.

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- All of this documentation will be reviewed by both attorneys and argued in court or through a mediator, which could take months and will cost both parties thousands of dollars in legal fees.

What most people don't realize is going through a change in circumstances trial is like going through the financial negotiations of their divorce a second time...it's expensive, stressful, opens all the old wounds of the prior divorce and **there is no guarantee of the outcome.**

- If the court approves a reduction in or the elimination of spousal support, the Recipient and children have a massive, potentially life changing financial dilemma to deal with, especially in the case of a stay at home parent. The Recipient could be forced to sell the family home, change school districts, take their children out of private school, go back to work full-time and put the children in child care, move in with parents, stop paying for college, etc., etc.
- If the divorce decree stipulates "non-modifiable spousal support," the Payor is obligated to make the payments regardless of his/her financial circumstances. While the Payor can plead his/her case to the court, it is unlikely "non-modifiable" spousal support will be lowered.

***Why would anyone want to incur the expense and stress of going through this process, with no guarantee of the outcome, while trying to manage a serious medical problem and their own financial dilemma, when there is an easy, affordable alternative?***

## Some Disability Facts

While many people think that disabilities are typically caused by freak accidents, the majority of long-term absences are due to back injuries and illnesses, such as cancer and heart disease.

\*Council for Disability Awareness, Long-Term Disability Claims Review, 2007

The most common causes of disability are listed below. This example is one carrier's analysis of their claims.



\*Principal Life Disability insurance claims incurred as of March 2009

43% of all people age 40 will have a long-term disability event prior to age 65.

\*JHA Disability Fact Book, 2006

# Insuring Divorce Settlement and Child Support Payments Against Disability

3 out of 10 workers between the ages of 25 and 65 will experience an accident or injury that will keep them out of work for 3 months or longer.

\*Social Security Admin, Fact Sheet, Jan 2007

Statistically, you are more likely to become disabled than die during your working years.

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