

SPECIAL NEEDS PLANNING

Understanding the 'Achieving a Better Life Experience' (ABLE) Act

Using ABLE Accounts with Special Needs Trusts

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The Achieving a Better Life Experience (ABLE) Act allows people with special needs to create tax-free savings accounts that can be used to pay for any expenses related to the eligible individual's blindness or disability that includes transportation, personal support services, and health care, among other expenses.

However, there are serious limitations in the use of ABLE accounts. Special needs, planners have used special needs trusts for years to accomplish similar goals. Which option should you choose? This pamphlet compares and contrasts ABLE accounts with the three types of special needs trusts and explains the pros and cons of each.

Comparing ABLE Accounts and Third Party Special Needs Trusts

ISSUES	ABLE ACCOUNT	THIRD PARTY SNT	MAIN DIFFERENCE
Who can use?	Only persons disabled before age 26	Any person with a disability	ABLE is limited; SNT can be used by anyone
Who can fund?	Anyone, including person with a disability	Anyone, except person with a disability (must use first party SNT)	ABLE can be funded by person with a disabilities own assets unlike the SNT
How many can a person have?	One	Unlimited	Person can only have one ABLE account but unlimited SNTs
Who can control?	Person with a disability and likely their legal guardian, conservator, or agent	Anyone except the person with a disability and their spouse	ABLE allows person with a disability to retain control while SNT requires someone else to be in charge
How much can be paid into per year?	\$15,000 total (equal to annual gift exemption) if working, may add some earnings	Unlimited	ABLE limited in how much can be funded and SNT allows unlimited funding
Is funding gift-tax free?	Yes	No	ABLE can be funded gift-tax free; an SNT is subject to gift tax (if funded during lifetime)
Is there a cap on how much can be in account?	Yes, currently \$100,000 limitation for SSI recipients and up to State 529-plan limitations	No	ABLE cannot be used for assets over \$100,000 while SNT can be used for any amount
How is income taxed?	No income tax	Taxed as a non-grantor trust at highest tax rate	SNT will be taxed on income earned while ABLE account will not
What type of distributions can be made?	Only "qualified disability expenses" as defined by government	No limitation, except for certain disbursements may reduce SSI	ABLE has much stricter limitations on how it can be used than SNT
What is effect of paying for food and shelter?	No ISM penalty assessed for payment of food or shelter	Implementation of SSI ISM penalty	ABLE allows payment of food or shelter with no SSI penalty
Who inherits on death of person with disability?	Medicaid first, then can go to heirs	Person with a disability's named heirs	SNT has no Medicaid payback but ABLE does; some States do not enforce payback

ABLE Plus First Party Special Needs Trusts

ISSUE	(D)(4)(A) SNT	POOLED SNT	THIRD-PARTY SNT	ABLE ACCOUNT
Purpose of Establishment	Enhances quality of life of person with a disability by paying for goods and services without the loss of SSI or Medicaid	Enhances quality of life of person with a disability by paying for goods and services without the loss of SSI or Medicaid	Enhances quality of life of person with a disability by paying for goods and services without the loss of SSI or Medicaid	Allows individuals with disabilities to have a cash account to pay for certain expenses without loss of SSI or Medicaid
Primary Beneficiary	Person with a disability	Person with a disability	Person with a disability, but can be others	Person with a disability
Settlor/Maker	Person with a disability, his or her parent, grandparent, legal guardian or a court	Person with a disability, plus their parent, grandparent, legal guardian or the court	Any person or entity except the person with a disability	Person with a disability or their agents, guardians, and maybe others
Trustee/Owner	Any individual or professional but not person with a disability	A non-profit agency but may outsource trusteeship to a professional	Any individual or professional but not the person with a disability	Any individual, including person with a disability
Number of Trusts/Accounts Allowed	Unlimited	Unlimited	Unlimited	One
Source of Funding	Person with a disability's assets	Person with a disability's assets	Assets of anyone but the person with a disability	Assets of anyone
Amount Allowed to Funded into Trust/Account	Unlimited	Unlimited	Unlimited	Limited to annual gift tax exemption (currently \$16,000 per year) plus may include some earnings
Amount Trust/Account is allowed to hold	Unlimited, but no additional funding after age 65	Unlimited, but may incur penalty if funded after age 65	Unlimited	Currently \$100,000 for SSI recipients and up to state's 529-plan amount
Use of Funds	Must be for "sole benefit" of person with a disability and certain disbursements may reduce or eliminate SSI or Medicaid eligibility	Must be for "sole benefit" of person with a disability and certain disbursements may reduce or eliminate SSI or Medicaid eligibility	No limitation, except for certain disbursements may reduce or eliminate SSI or Medicaid eligibility	Only "qualified disability expenses" as defined by government are exempt from taxation
Effect of Paying for Food or Shelter	Implementation of SSI ISM penalty	Implementation of SSI ISM penalty	Implementation of SSI ISM penalty	No ISM penalty assessed for payment of food or shelter
Taxation of funds	Taxed as a grantor trust at person with a disability's tax rate	Taxed as a grantor trust at person with a disability's tax rate	Taxed as a non-grantor trust except to the extent funds are used on behalf of the beneficiary	Medicaid first, then can go to heirs, although some States will not seek Medicaid payback
Receiver of assets from trust/account on death of person with a disability	Medicaid first, then can go to heirs or whomever is named in document	Medicaid first, then can go to heirs or whomever is named in document	Heirs or whomever is named in document	Medicaid first, then can go to heirs

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