ABLE Accounts

Empowering Special Needs Planning Tool

ABLE accounts are special types of bank accounts for disabled individuals that were created by the Federal government in 2014. They are a new option for Special Needs Planning and can be used in conjunction with Special Needs Trusts as part of a comprehensive plan. ABLE accounts are modelled after 529 education savings accounts and are also referred to as 529A accounts. The individual states are responsible for creating programs to run ABLE accounts, but owners may enroll in any state's plan.

ABLE accounts are owned by a disabled individual. To be eligible, the individual must have been disabled prior to age 26, and the disability must meet the Social Security definitions. Each individual is permitted to own only one ABLE account. On January 1, 2026, there will be an adjustment to the eligibility age from 26 to 46.

Funds in an ABLE account are tax-advantaged investment accounts. The income generated by the investment is exempt from income taxation as long as the owner remains disabled, and the funds are spent on qualifying expenses. In addition to income tax, Pennsylvania ABLE accounts are also exempt from Pennsylvania Inheritance tax.

ABLE accounts may be funded by the disabled individual, parents, or anyone else. However, a maximum of $17,000 may be contributed annually (but this amount is indexed for inflation). Prior legislation now allows for approximately $12,000 in additional annual funding for account owners that are contributing their own wages.

There are also limits on the total account value. For instance, there is an account maximum value of $511,758 in Pennsylvania (2023). This means that once this limit is reached, no additional contributions can be made. Interest can still be earned.

Many disabled individuals, especially those with a disability prior to age 22, may rely upon SSI benefits. Broadly speaking, to be eligible for SSI an individual may have no more than $2,000 in countable resources, which would include money in normal bank accounts. However, if a beneficiary owns an ABLE account, up to $100,000 does not count for SSI eligibility purposes.

How are ABLE funds used? The disabled individual has direct access to the account and may make withdrawals. Special Needs Trusts, on the other hand, are only accessible by the Trustee, who cannot be the disabled individual. Depending upon a family's unique circumstances, the independence of the ABLE account may be preferred, while the structured management under a Trustee in a special needs trust may be valuable in preserving funds.

Similar to 529 accounts, there are limitations on what money in an ABLE account may be used for. Owners should use ABLE funds for "qualified expenses," which are expenses that relate to the owner's disability. This is a broad category which includes expenses paid for education, housing, healthcare, transportation, and many more expenses. Although most plans do not have extensive reporting requirements for the use of these funds, an owner should keep detailed records in case they are audited by either the Federal or state revenue agencies, or the agency that administers any public benefits that they may be receiving. If owners use the funds for non-qualified expenses, taxes and penalties will result.

In addition to being mindful of the ABLE rules for qualified expenses, owners must be aware of the requirements of any public benefits that they receive. For instance, if an owner withdrew $5,000 to pay for qualified expenses that they anticipated over the next few months, they may render themselves ineligible for SSI if they fail to spend all the money with the month of withdrawal.

Another consideration between Special Needs Trusts and ABLE accounts is payback of public benefits received. Self-settled Special Needs Trusts must be used whenever the funds going into the trust belonged to the disabled individual. Upon the death of the beneficiary of the trust, if any funds remain in the Trust, they must be used to repay Medicaid to the extent that Medicaid paid benefits on behalf of the disabled individual. On the other hand, Third Party Special Needs Trusts, which are funded with funds from individuals other than the disabled individual, do not have any payback for Medicaid benefits and remaining funds may be distributed to other family members. In Pennsylvania, our state took an approach that upon the death of the disabled individual, that the state would NOT asset a claim for against the ABLE account. There was some uncertainty about this policy since it did initially appear that the Federal law may require the payback for Medicaid benefits received from remaining ABLE funds.

ABLE accounts are a powerful tool in the box of options available to individuals with a disability. The rules concerning these accounts continue to be developed, and there may be advantages to a planning approach that incorporates both ABLE accounts and Special Needs Trusts. As Certified Elder Law Attorneys, who practices in the areas of in Elder Law and Special Needs Planning, we will be able to discuss your unique circumstances and make recommendations on the best plan for you and your family.