

ABLE ACCOUNTS
FIRST PARTY TRUSTS
POOLED TRUSTS

Presented By:

Frederick M. Misilo, Jr., Esq.

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ABLE ACCOUNT BASICS

- Section 529A of I.R.C. – ABLE account is a tax advantaged savings and investment account owned by a person who has a Social Security Number or tax filing ID and has a disability or blindness:
 - With an onset of disability before age 26, AND;
 - Receives Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI) benefits; OR;
 - Self-certifies that they have written and signed disability certification from a qualifying physician

How does an ABLA Account Work?

- ABLA accounts are not considered for SSI eligibility up to \$100,000, if account reaches \$100,000, SSI is suspended.
- Entire account balance is disregarded for Medicaid and other federal means tested benefits.
- Account may grow without limit, but contributions are not permitted which cause the account to be in excess of \$500,000
- One account per person
- Annual calendar year contribution limited to federal gift tax exclusion, \$17,000 (2023), more if the beneficiary is working.

How does an ABLA Account Work?

- ABLA account owners who work and who don't have retirement contributions made during the tax year may make additional contributions from **THEIR EARNINGS**. The amount is limited to **whichever is less**:
 - The ABLA account owner's employment earnings during the taxable year, or,
 - \$13, 590, if living in the continental U.S. or,
 - \$15,630, if living in Hawaii or,
 - \$16,990, if living in Alaska.

How does an ABLA Account Work?

- Qualified Disability-Related Expenses (“QDE’s”) are expenses for supplies or services related to the account owner’s blindness or disability that assists them in increasing and/or maintaining health, independence and/or quality of life.
- Education, food, housing, transportation, employment training and support, assistive technology, personal support services, legal fees, health care expenses, financial management and administrative services, and other related expenses are QDE’s.

What does “tax advantaged” mean?

- Earnings in the account are tax exempt.
- Distributions of QDE’s are tax exempt.
- Penalties if distributions are made for anything that is not a QDE.

Additional “Fun” Facts on ABLE Accounts

- Payments from an ABLE account for housing expenses do not result in a reduction in SSI payments.
- Housing expenses include:
 - Mortgage (including property insurance if required by mortgage holder);
 - Real property taxes;
 - Rent;
 - Heating costs and utilities;
 - Sewer and garbage removal.

Because you asked for them... more “fun” facts about ABLÉ accounts

- Transfers from a 529 account to an ABLÉ account are now permitted without any tax penalty, subject to the following:
 - Done before January 1, 2026
 - Beneficiary is the same person on both accounts, or the 529 beneficiary is a family member of the ABLÉ account owner.
 - The rollover from the 529 account does not exceed the \$17,000 calendar contribution limit and must occur within 60 days of distribution.
 - QDE’s allow for more expansive expenses than 529 accounts.

But remember.....

Government Payback Obligation!!!

- Upon the death of the ABLE account owner, the state Medicaid agencies have the right to be reimbursed for Medicaid benefits paid to the ABLE account owner from the date of the creation of the ABLE account.

One Last Thing on ABLÉ Accounts.... Age Adjustment Act of 2022

- ABLÉ eligibility has ben expanded to include people who have a disability that began before age 46.
- **This goes into effect on January 1, 2026.** Good news for an estimated six million more people with disabilities, including one million veterans, the opportunity to open, save and invest funds for their future in an ABLÉ account.

Wicked Valuable Resource Guides

ABLE Accounts

- National ABLE National Resource Center : www.ablenrc.org
- Massachusetts Additional Resources:
 - Massachusetts Educational Finance Agency:
www.mefa.org/attainablesm-able-savings-plan
 - Fidelity Investments, Attainable Savings Plan:
www.fidelity.com/able

What about trusts?

What role do they play in planning?

- Third party supplemental needs trust (common law) – most common and most important
- First party supplemental needs trust, 42 U.S.C. 1396p (d)(4)(A),
- Pooled income trust managed by a non-profit corporation, 42 U.S.C. 1396 (d)(4)(C).

Third Party Trusts “Inheritance Trust”

- Common Law Trust
- Assets gifted by third parties: inheritance, life insurance
- Grantor’s intention is to *supplement* available government benefits, not support beneficiary
- Revocable if left unfunded
- Irrevocable upon the death of parent(s) or upon funding
- No pay back provision – remainder beneficiaries usually family members or charities

First Party / OBRA '93 Trusts 42 USC 1396p(d)(4)(A)

- Irrevocable
- Beneficiary meets federal definition of disability
- Created by the individual with a disability, a parent, grandparent, guardian, or by a court
- Assets held for the **primary benefit** of the beneficiary
- Specific situations give rise to the need for this type of trust, i.e. assets owned by individual, correct past planning errors, settlement from lawsuit or irrevocable assignment of child support payments
- Assets of elder family member needing MassHealth/nursing home care
- Beneficiary must be under 65 years old
- Payback provisions – upon the death of the beneficiary, reimbursement to State Medicaid agency for benefits provided to the beneficiary

Pooled Income Trust 42 USC 1396p(d)(4)(c)

- Managed by a non-profit corporation
- Funds are pooled in a single investment fund
- Sub-accounts held for the benefit of individual beneficiary
- Some pooled income trusts have both 3rd party and 1st party trusts
- Upon death of beneficiary, portion of assets reserved by non-profit
- In MA – The Arc of Bristol County, Berkshire County Arc and PLAN of Massachusetts and Rhode Island.

Medicaid Payback

Estate Recovery	ABLE Act	3rd Party SNT	(d)(4)(A) and (d)(4)(C) Trusts
Medicaid used for medical purposes after age 55	Amounts paid by Medicaid after the creation of the ABLE Account	No lien	All Medicaid paid during lifetime

Thank You!!

Frederick M. Misilo, Jr., Esq.

fmisilo@fletchertilton.com

508-459-8059