

Comparison

Special Needs Trusts and ABLE Accounts



The Special Needs
PLANNING INSTITUTE

**Should I use an
ABLE Account
instead of a
Special Needs Trust?**

NO!!!

Special Needs Trust	ABLE Act Account
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Created and Managed by	Family, Friends, Guardians, Trustees, Caregivers	Families and Qualified Individuals
Who can serve as Trustee	Family, Friends, Advisors, Institutions appointed by creators of the trust, Court	No Trustee. Custodian of account
Hire/Fire/Change Trustee	Yes	Not applicable - Program Administrator
Successor Trustees	Appointed by Trust creator (Grantor)	Not applicable - Program Administrator
Authority to remove Trustee	Yes	No - Program Administrator
Authority to make investment decisions	Trustee has sole authority. Beneficiary may not have any authority.	Program Administrator
Control Investment Risk	Family has authority as Trustee	Program Administrator Range of available investment accounts determined by States
Length of Time to Withdraw Funds	Immediate by Trustee	Must be approved by managing agency unless there is a Debit Card, then bill is submitted for approval.
Distribution of remaining trust funds after death of beneficiary	Creators of Trust (Grantors) decide who receives trust remainder. No Payback!	Payback to Medicaid first, then balance to heirs
Tax Penalties Non-Qualified Withdrawals	None	Earning Portion subject to regular income tax, 10% penalty and possible State penalty
Who Qualifies	May be established for anyone	Person diagnosed prior to age 26* and receiving SSI or DI under Title II of SS or has an impairment that will result in death or last at least 12 months or is blind and provides a diagnosis by doctor. Eligibility for ABLE does not mean eligibility for SSI or Medicaid.
Authority to change who receives funds after death of beneficiary	Yes, Trust Grantors during their lifetime.	Subject to Payback

Special Needs Trust	ABLE Act Account
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<i>Payback to Medicaid after death of beneficiary</i>	No	Yes – The amount is based on payments <i>after</i> the ABLE acct begins
<i>Ability to choose Financial Advisor</i>	Yes	No – investments limited by States
<i>Administrative Fees charged</i>	Family members usually would not charge. Professional managers and institutions have regulated fees	Yes
<i>Unique Benefit of Trust</i>	Family retains complete control	Provides an option to put aside funds in a tax free accumulation and distribution account without jeopardizing government benefit eligibility as long as the account is in compliance.
<i>Maximum Annual Deposit</i>	Unlimited	\$15,000 – If amount is exceeded, it is no longer considered an ABLE Account. Assets are a “countable resource.”
<i>Maximum Total without jeopardizing SSI eligibility</i>	Unlimited	\$100,000 If exceeded SSI is suspended. Reinstated if below acct max with no reapplication.
<i>Maximum Total without jeopardizing Medicaid eligibility</i>	Unlimited	Account must be below State 529 plan max for eligibility Example: Arizona - \$462,000/California - \$371,000
<i>When Can It Be Created</i>	Any time prior to age 65	Anytime as long as the disability began prior to age 26
<i>Taxation</i>	Files 1041 Income Tax return for Trusts.	Tax Free earnings and distributions
<i>Transferring Assets</i>	Remainderman named to receive assets after death of the beneficiary	Funds may be “rolled” over to another account or to another family member who qualifies.

Special Needs Trust	ABLE Act Account
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What can funds be used for	Supplemental needs that do not duplicate government benefits	Qualified Deductible Expenses (QDE) ie education, housing, and transportation
Who Can Give Funds	Anyone except the beneficiary (person with special needs)	Anyone
Tax Deductible Deposits	No	No
Number of Trusts/Accounts per Individual-	Unlimited	One - Aggregate Contributions are subject to State limits for 529
Assets Allowed	Anything	Cash or rollovers from another family member's account who also qualifies.
Gift Tax	Cannot use annual gift tax exclusion.Can use the Lifetime Exclusion	Can use annual gift tax exclusion.Can use the Lifetime Exclusion
Income Tax	<p>A special needs trust can often qualify as a Qualified Disability Trust – and many distributions are deductible at the beneficiaries tax level – Requires tax return for trust and beneficiary.</p> <p>If a 3rd party special needs trust is drafted as a Qualified Disability Trust</p> <ul style="list-style-type: none"> • It has a full \$4,000 exemption in 2015, & all distributions from the Trust for the benefit of the beneficiary are taxed to the beneficiary, AND • The beneficiary has his/her own, a 2nd exemption of \$4,000, & a standard deduction in 2015 of \$6,300. • A 3rd party special needs trust can shelter a total of \$14,300 in 2015 of taxable income. 	<p>Tax Free</p> <p>An ABLE Account with \$100,000 (maximum not to lose SSI) would need to earn over14% for any income tax benefit over a 3rd party SNT.</p> <ul style="list-style-type: none"> • Keep in mind the ABLE Account is subject to a Medicaid Payback.

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