



THE LAW OFFICE OF
RANDY HOPE STEEN, LTD.

COMPARISON OF TRUSTS

ABLE Account

Third Party Special Needs Trust

First Party Special Needs Trust

Third Party Pooled Special Needs Trust

First Party Pooled Special Needs Trust

ABLE Account

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Who is Eligible? Are there age restrictions?

A disability that occurred before age 26 and: (a) Be able to provide if requested, written, signed documentation from a licensed physician certifying blindness, "physical or mental impairment which results in severe functional limitations" or a condition listed on the Social Security Administration's list of compassionate allowances conditions. or (b) Receiving or eligible to receive SSI or SSDI designated beneficiaries can open an ABLE account.

Who can set up and fund the account?

The beneficiary or designated beneficiary's parent, legal guardian, or agent acting under power of attorney can set up the ABLE account. Any person can contribute to the beneficiary's ABLE account, including the designated beneficiary.

Does the beneficiary have to reside in the state where the program or trust is located?

Depends on the State of residence.

Can the beneficiary have more than one account or type of trust?

A beneficiary can have only one ABLE account.

Are there any restrictions on contributions?

A limit of a total maximum \$15,000 per year or that amount equal to the annual federal gift tax exclusion can be contributed. A maximum account value in PA of \$511,758.00

Are Medicaid benefits protected?

A beneficiary can retain Medicaid if the disbursements are for qualified expenses and the account does not exceed the state's ABLE plan aggregate contribution limit that is adopted from the state's 529 college savings plan.

Are SSI benefits protected?

As long the disbursements are for qualified expenses and the ABLE account remains below \$100,000. If the account balance goes above \$100,000, then the individual's SSI benefits will be suspended but not terminated until it falls below \$100,000. Note that funds from an ABLE Account can be used to pay for shelter expenses such as mortgage or rent, homeowner's insurance, taxes, heat, electricity, water, sewer and garbage pickup without resulting in a one-third loss of SSI. However, money taken out for these expenses have to be paid in the same month as distribution.

Is there oversight to ensure the funds are used for the individual with a disability in accordance with the rules?

The eligible beneficiary or person with signing authority (designated beneficiary's parent, legal guardian, or agent acting under power of attorney) will be responsible for retaining documentation about disbursements and will need to categorize distributions to determine federal income tax obligations. State reporting requirements will vary.

What type of assets are accepted?

Cash and rollovers from 529 plans.

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What are the set up and ongoing costs?

Fees vary with each state's ABLE program. Set up and ongoing costs are nominal, but investment choices are restricted.

What expenses can be paid?

Qualified Disability Expenses (QDE) must be related to the beneficiary's disability and include but are not limited to: education; housing, transportation, employment training & support, assistive technology & related services, health, prevention & wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial and basic living expenses. To avoid any impact to a beneficiary's SSI benefits, funds from the ABLE account used to pay for housing must be spent within the same calendar month that funds are withdrawn from the account.

How are funds disbursed from the account?

The designated beneficiary or the person with signature authority (designated beneficiary's parent legal guardian, or agent acting under power of attorney) has account access to make disbursements by check and/or credit card.

Are contributions tax-deductible?

Contributions are not deductible for federal tax purposes. States may offer tax incentives for in-state eligible beneficiaries.

Is the account revocable?

ABLE accounts are irrevocable. Funds in an ABLE account can be transferred to another qualifying beneficiary who must be a sibling, whether by blood or by adoption (brother, sister, step-brother, stepsister, half-brother, and half-sister).

How are funds invested?

The investment options vary with each state's program. The eligible beneficiary or person with signing authority can change the way funds are invested no more than twice a year. Financial records should be made available that document all activity in the account

What happens if nonqualified expenses are paid?

Account earnings from the ABLE account used for non-qualified disability expenses will be subject to federal income tax and an additional 10 percent federal tax penalty.

What happens to remaining funds upon the death of the beneficiary?

ABLE account is subject to Medicaid payback for medical benefits received from the time since the ABLE account was established. Claim is limited to the total amount of assistance paid by the Medicaid, less premiums paid to a Medicaid Buy-In program and after all outstanding Qualified Disability Expenses have been paid. In PA no Medicaid payback right now. Upon death the account balance reverts to Beneficiary's estate. In PA the state may seek Medicaid recovery once the monies pour into the estate for amounts spent when the beneficiary was 55 or older. Funds remaining in the ABLE account can be (cont.) used for funeral expenses prior to Medicaid payback.

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Who is Eligible? Are there age restrictions?

For persons who are disabled, the beneficiary does not need to have a specific disability. Families who suspect that a family member may need governmental benefits in the future can set aside that family member's inheritance in a third party special needs trust.

Who can set up and fund the account?

The beneficiary or designated beneficiary's parent, legal guardian, or agent acting under power of attorney can set up the ABLE account. Any person can contribute to the beneficiary's ABLE account, including the designated beneficiary.

Does the beneficiary have to reside in the state where the program or trust is located?

There are no restrictions on a third party special needs trust.

Can the beneficiary have more than one account or type of trust?

A beneficiary can have more than one trust account.

Are there any restrictions on contributions?

No limits on contributions per year but no contributions can be made by the beneficiary or with funds the beneficiary has a legal right to.

Are Medicaid benefits protected?

A beneficiary can retain Medicaid if all distributions are made to vendors or third parties and cash not distributed directly to the beneficiary.

Are SSI benefits protected?

The trust is set up to protect SSI benefits. There are no restrictions on the account balance in order to maintain eligibility. Distributions toward shelter expenses may be deemed as in kind support and result in a one-third loss of SSI. There is discretion to transfer up to \$15,000 per year to an ABLE Account to be used for Qualified Housing Expenses which may avoid a reduction in SSI.

Is there oversight to ensure the funds are used for the individual with a disability in accordance with the rules?

While SSI, DMH/DDS/ DHS and Medicaid agencies can demand an accounting of how funds in a third party special needs trust are managed, there is less oversight than with pooled first and third party special needs trusts. With an individual trustee or Corporate trustee who is not familiar with distribution rules, there is a greater risk of naive error which may result in a loss or diminution of benefits.

What type of assets are accepted?

Unless a corporate or other professional trustee has specific rules regarding what assets can be held in a trust, there are no limitations as to what type of assets are acceptable.

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What are the set up and ongoing costs?

Administration fees will vary depending on who is serving as trustee. If an individual family member, he or she may not charge. There are administrative costs involved with filing taxes and filing accountings.

What expenses can be paid?

Disbursements can pay for goods and services that will enrich the quality of life of the beneficiary while protecting benefits of SSI and Medicaid recipients. There is greater flexibility in what the pooled trust can pay for compared to the ABLE account since expenses do not have to be related to the beneficiary's disability. The following are some examples: education, transportation, health care, cable, phone, internet, employment training and support, assistive technology, care provider, prevention and wellness, home renovations, legal fees, hobby, leisure, and recreation activities, gifts for others that are given on behalf of the beneficiary, paying for a family member companion on vacations or travel or for family and/or friends to visit the beneficiary and all funeral expenses.

How are funds disbursed from the account?

The trustee has sole discretion regarding all distributions from a Special Needs Trust.

Are contributions tax-deductible?

Contributions are not tax-deductible (federal or state).

Is the account revocable?

The trust can be revocable or irrevocable.

How are funds invested?

The investment options are within the discretion of the trustee. General trust rules require that they conform to reasonable prudent person rules regarding investments.

What happens if nonqualified expenses are paid?

Distributions are not limited to certain qualifying expenses.

What happens to remaining funds upon the death of the beneficiary?

There is no pay-back requirement for third party special needs trusts. It can go to family, charity, etc.

First Party Special Needs Trust

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Who is Eligible? Are there age restrictions?

Self-settled special needs trust requires a person per SSA regulations under the age of 65 be disabled but the trustee of a (d)(4)(A) trust can be a family member, friend, professional or corporate trust.

Who can set up and fund the account?

The grantor can be the disabled person, a parent, grandparent, court or legal guardian. The trust is funded with the beneficiary's own money.

Does the beneficiary have to reside in the state where the program or trust is located?

There are no restrictions on a first party special needs trust.

Can the beneficiary have more than one account or type of trust?

A beneficiary can have more than one trust account.

Are there any restrictions on contributions?

No limits on contributions per year but contributions can only be made by the beneficiary or with funds the beneficiary has a legal right to.

Are Medicaid benefits protected?

A beneficiary can retain Medicaid if all distributions are made to vendors or third parties and cash not distributed directly to the beneficiary.

Are SSI benefits protected?

The trust is set up to protect SSI benefits. There are no restrictions on the account balance in order to maintain eligibility. Distributions toward shelter expenses may be deemed as in kind support and result in a one-third loss of SSI. There is discretion to transfer up to \$15,000 per year to an ABLE Account to be used for Qualified Housing Expenses which may avoid a reduction in SSI.

Is there oversight to ensure the funds are used for the individual with a disability in accordance with the rules?

While SSI, DMH/DDS/ DHS and Medicaid agencies can demand an accounting of how funds in a third party special needs trust are managed, there is less oversight than with pooled first and third party special needs trusts. With an individual trustee or Corporate trustee who is not familiar with distribution rules, there is a greater risk of naive error which may result in a loss or diminution of benefits.

What type of assets are accepted?

Restrictions will vary depending on the trustee's rules or practices. An individual trustee may be more willing to hold real estate in the trust than a professional trustee.

First Party Special Needs Trust

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What are the set up and ongoing costs?

Enrollment and administration fees are likely higher than those associated with ABLE accounts but are often lower than for-profit businesses that offer trust services. Management fees for a pooled special needs trust can be less than one percent on an annual basis. A fee schedule should be available.

What expenses can be paid?

Disbursements are for the sole benefit of the beneficiary and can pay for goods and services that will enrich the quality of life of the beneficiary while protecting benefits of SSI and Medicaid recipients. There is greater flexibility in what the pooled trust can pay for compared to the ABLE account since expenses do not have to be related to the beneficiary's disability. The following are some examples: education, transportation, health care, cable, phone, internet, employment training and support, assistive technology, care provider, prevention and wellness, home renovations, legal fees, recreation, hobby and leisure activities. Purchasing a prepaid funeral is allowed but funeral expenses are disallowed following the death of the beneficiary.

How are funds disbursed from the account?

The trustee has sole discretion regarding all distributions from a Special Needs Trust

Are contributions tax-deductible?

Contributions are not tax-deductible (federal or state).

Is the account revocable?

The trust is irrevocable.

How are funds invested?

The investment options are within the discretion of the trustee. General trust rules require that they conform to reasonable prudent person rules regarding investments.

What happens if nonqualified expenses are paid?

Distributions are not limited to certain qualifying expenses.

What happens to remaining funds upon the death of the beneficiary?

Federal law authorizes pooled trust organizations to pay back the state(s) for medical claims paid by Medicaid on behalf of the beneficiary during the beneficiary's lifetime or the funds can go to a nonprofit organization. Each nonprofit pooled trust organization has its own remainder policy. Some do not retain any of the remainder funds while others retain all or a portion of the funds. Note: Paying for funeral prior to Medicaid payback is not allowed. Note: Paying for funeral prior to Medicaid payback is not allowed.

Third Party Pooled Special Needs Trust www.rsteenlaw.com

Who is Eligible? Are there age restrictions?

For persons who are disabled but may be used for a beneficiary who is borderline disabled or is modestly employed and not eligible for SSI or SSDI but may need other needs based benefits such as Medicaid, or Housing Subsidy. There is no age restriction for the beneficiary.

Who can set up and fund the account?

The grantor can be anyone, except the beneficiary. Multiple third-parties can contribute to the trust.

Does the beneficiary have to reside in the state where the program or trust is located?

Many pooled trusts organizations are state-specific, but there are a number of national pooled trust organizations that serve clients throughout the United States.

Can the beneficiary have more than one account or type of trust?

A beneficiary can have more than one trust account.

Are there any restrictions on contributions?

No limits on contributions per year but no contributions can be made by the beneficiary or with funds the beneficiary has a legal right to.

Are Medicaid benefits protected?

A beneficiary can retain Medicaid if all distributions are made to vendors or third parties and cash not distributed directly to the beneficiary.

Are SSI benefits protected?

The trust is set up to protect SSI benefits. There are no restrictions on the account balance in order to maintain eligibility. Distributions toward shelter expenses may be deemed as in kind support and result in a one-third loss of SSI. There is discretion to transfer up to \$15,000 per year to an ABLE Account to be used for Qualified Housing Expenses which may avoid a reduction in SSI.

Is there oversight to ensure the funds are used for the individual with a disability in accordance with the rules?

A pooled special needs trust is helpful when a parent or other person wants to leave money for a disabled individual but fears the individual cannot prudently handle funds on his or her own or in the case where a family member needs to remain eligible for needs based benefits. This trust offers an experienced choice to families when selecting a trust administrator to manage funds left for the benefit of a disabled individual. For clients receiving SSI and Medicaid benefits, the pooled trust administrator provides oversight so as to not jeopardize these benefits.

What type of assets are accepted?

Cash assets are accepted to fund the trust. The funds are pooled together for investment purposes and each beneficiary has his or her own sub account. Some pooled trust organizations may accept real estate or non-cash assets.

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What are the set up and ongoing costs?

Enrollment and administration fees are likely higher than those associated with ABLE accounts but are often lower than for-profit businesses that offer trust services. Management fees for a pooled special needs trust can be less than one percent on an annual basis. A fee schedule should be available.

What expenses can be paid?

Disbursements can pay for goods and services that will enrich the quality of life of the beneficiary while protecting benefits of SSI and Medicaid recipients. There is greater flexibility in what the pooled trust can pay for compared to the ABLE account since expenses do not have to be related to the beneficiary's disability. The following are some examples: education, transportation, health care, cable, phone, internet, employment training and support, assistive technology, care provider, prevention and wellness, home renovations, legal fees, hobby, leisure, and recreation activities, gifts for others that are given on behalf of the beneficiary, paying for a family member companion on vacations or travel or for family and/or friends to visit the beneficiary and all funeral expenses.

How are funds disbursed from the account?

Named by the grantor, an advocate is responsible for making disbursement requests on behalf of beneficiary. The advocate has access to financial statements and can be the beneficiary, guardian, conservator, power of attorney, family member, case manager, and/or someone named who is familiar with the needs of the beneficiary. The PSNT organization makes payments from a beneficiary's sub account for approved disbursements.

Are contributions tax-deductible?

Contributions are not tax-deductible (federal or state).

Is the account revocable?

The trust can be revocable or irrevocable.

How are funds invested?

Trust funds are pooled, or grouped together, for investment purposes and an accounting is maintained in each beneficiary's sub account. Pooling funds can provide for greater investment opportunities and lower administrative fees

What happens if nonqualified expenses are paid?

Distributions are not limited to certain qualifying expenses.

What happens to remaining funds upon the death of the beneficiary?

There is no Medicaid payback requirement. What happens to remaining funds in the trust upon the death of the beneficiary varies greatly among pooled trust organizations. Some do not retain any of the remainder funds and any remaining funds will go to the successor beneficiary(ies) named in the Joinder Agreement. Others retain all or a portion of the remaining funds.

First Party Pooled Special Needs Trust

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Who is Eligible? Are there age restrictions?

The beneficiary has a disability that meets the SSA definition of disability and is under the age of 65 when established.

Who can set up and fund the account?

The grantor can be the beneficiary, parent, grandparent, court or legal guardian. The trust is funded with funds which belong to the beneficiary as in the first party special needs trust.

Does the beneficiary have to reside in the state where the program or trust is located?

There are no restrictions on a first party pooled special needs trust.

Can the beneficiary have more than one account or type of trust?

A beneficiary can have more than one trust account.

Are there any restrictions on contributions?

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How are funds disbursed from the account?

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Are contributions tax-deductible?

Contributions are not tax-deductible (federal or state).

Is the account revocable?

The trust is irrevocable.

How are funds invested?

Trust funds are pooled, or grouped together, for investment purposes and an accounting is maintained in each beneficiary's sub account. Pooling funds can provide for greater investment opportunities and lower administrative fees

What happens if nonqualified expenses are paid?

Distributions are not limited to certain qualifying expenses.

What happens to remaining funds upon the death of the beneficiary?

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