

LAW OFFICE
RUTHANN P. LACEY, P.C.

Concentrating in Elder and Special Needs Law

3541-E Habersham at Northlake
Tucker, Georgia 30084
Telephone: (770) 939-4616 • Facsimile: (770) 939-1758
www.elderlaw-lacey.com

The ABLE Act

After almost ten years of a campaign championed by the national disability community, on December 16, 2014 Congress passed the ABLE (“Achieving a Better Life Experience”) Act of 2014 and it was signed into law. Under this Act individuals who have disabilities can create tax-free savings accounts to assist them in maintaining their health and independence while remaining eligible for means-tested public benefits. An ABLE account may be useful in addition to, and generally not in lieu of, other traditional special needs planning.

Under the ABLE Act states may (but are not required to) develop programs that enable people with disabilities to establish accounts modeled on the 529 college savings plans. Georgia enacted the “Georgia Achieving a Better Life Experience (ABLE) Act,” and has partnered with the Ohio ABLE program, known as STABLE.

To establish a STABLE account the onset of the individual’s disability must have occurred prior to age 26. The individual must also either be eligible for SSI or SSDI, *or* have a condition on Social Security’s list of Compassionate Allowances Conditions, *or* self certify with a document from a medical professional confirming that the individual has a marked and severe functional limitation that has lasted or is expected to last for at least a year.

Funds in a STABLE account can be used for “disability-related” purposes, including healthcare, education, housing, transportation, employment training and support, assistive technology, personal support and other care expenses, legal fees, expenses for oversight and monitoring, and funeral expenses. Funds can be spent by logging into the online account and directing STABLE where to send a check, or by use of a Visa branded loadable prepaid debit card (“STABLE card”) that the owner of the account can use to pay for goods and services that benefit him. Expenses are tracked and recorded by STABLE. While STABLE doesn’t ask what the funds were used for it’s wise to keep track as Social Security or the IRS may ask for documentation.

One ABLE account may be established for each qualified person with special needs. Total annual contributions cannot exceed the federal gift tax limit (\$15,000 as of 2020), though if the owner of the account is employed he can contribute an additional \$12,490 of employment income to the account each year.

Under the Tax Cuts and Jobs Act of 2017 the law now also allows for a rollover from a traditional 529 Plan to an ABLE account. The funds rolled over do count toward the annual \$15,000 funding limit.

Contributions are not tax-deductible, but income earned by the account will not be taxed. There is a “savers tax credit” under which the owner who works and deposits his employment income into the ABLE account can get a tax credit for a portion of the value of the assets deposited.

The first \$100,000 in an ABLE account will not adversely affect the individual’s eligibility for SSI benefits. Total contributions from all contributors are capped at the limit established by each state for its 529 accounts (\$482,000 in 2020).

Funds remaining in the account at the beneficiary’s death (even funds contributed by parents, grandparents and others) must be used to reimburse Medicaid for expenses incurred.

If an individual is not capable of managing his own ABLE account then it may be necessary to have a Conservator appointed for him, for purposes of establishing and managing the account. This adds some expense (in court filing fees and bonding fees) and ongoing reporting requirements to the establishment and ongoing maintenance of such an account.

So will a STABLE account be of benefit to you or your family member with special needs? Maybe, but carefully weigh the pros and cons of each.

One significant reason to consider establishing a STABLE account is to address the one-third reduction that SSI imposes on individuals who receive SSI and who benefit from someone else (sometimes a Special Needs Trust) paying for food and shelter costs. If the individual pays those costs from his STABLE account there is no reduction in his SSI benefit.

A STABLE account may also make sense for: (a) an individual who receives an inheritance of less than \$15,000 that is not properly left to a third party special needs trust by the deceased relative; (b) an individual who receives a litigation settlement of less than \$15,000; or (c) an individual who has accumulated unspent SSI/SSDI/earnings that will push the individual’s resources over the allowable amount. Keep in mind though that only \$15,000 may be contributed by all contributors into one account in one calendar year.

Enrollment in the STABLE Account is fast and easy. Go to www.GeorgiaSTABLE.com to establish and account or for more information.

Following is a chart comparing the criteria for the individual “d4A” Special Needs Trust, the ABLE Act account, and the Third Party Special Needs Trust.

	Individual Special Needs Trust	ABLE Act Account	Third Party Special Needs Trust
Who May Establish	Individual, Parent, Grandparent, Court, or Legal Guardian	Anyone	Anyone other than the Beneficiary
How Titled	SNT for benefit of Beneficiary	Name of individual	SNT for benefit of Beneficiary
Source of Funds	Personal Injury Lawsuit, Inheritance, Lottery Winnings, Etc.	Personal Injury Lawsuit, Gifts, Inheritance, Lottery Winnings, Etc.	Assets of anyone other than the Beneficiary
Funding Limit	No limit	Limited to \$15,000 per year; BUT if the owner is employed can contribute an additional \$12,490 per year	No limit
Balance limit to maintain benefits	No limit	If balance more than \$100,000 lose SSI; if balance more than \$482,000 lose Medicaid	No limit
Age Requirement	Beneficiary must be less than 65	No upper limit. Beneficiary must have been disabled before age 26	No Age Limit
Accounts allowed per Beneficiary	No limit	One	No limit

Use of Funds	Payments to vendors to provide quality of life for Beneficiary, in the Trustee's discretion	Approved "disability-related" purposes (very broad!)	Payments to vendors to provide quality of life for Beneficiary, in the Trustee's discretion
Court Involvement after Established	Usually none	If Beneficiary is incompetent, ongoing reporting and bonding	None
Medicaid Payback	Yes	Yes	No
Who may serve as Trustee	Any responsible individual at least 18 years old, but not the Beneficiary or his spouse	Beneficiary or his designee; funds managed by "529" administrator	Any responsible individual at least 18 years old, but not the Beneficiary or his spouse
Beneficiaries	For the sole benefit of an individual with a disability as defined by the SSA	For the sole benefit of an individual with a disability as defined by the SSA	May have multiple Beneficiaries; not all beneficiaries must have a disability

