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The Pros and Cons of ABLE Accounts

A new federal law called the Achieving a Better Life Experience (ABLE) Act gives some people with disabilities or their families the ability to establish tax-free savings accounts that will not affect their ability to qualify for, or remain on, government assistance. Advocates have fought for years for this law and it will provide a tangible benefit to many people with disabilities.

However, ABLE accounts may not be for everyone. Here are some pros and cons of these new accounts and how they compare to an alternative, special needs trusts.

PRO: A person with disabilities can set up his own account with his own money instead of relying on a parent, grandparent or court to establish a first-party special needs trust for him.

CON: ABLE accounts can only be established for the benefit of people who developed their disabilities before turning 26 years old. By contrast, if a special needs trust is established with funds from the trust beneficiary, it does not matter when the person developed the disability.

PRO: A person with disabilities can manage the funds in her own ABLE account, making the person less reliant on others for assistance and making it easier to access funds.

CON: Some people with disabilities can be taken advantage of if they have control of their own funds. If a special needs trust was utilized to hold the funds instead, a trustee has a legal obligation to safeguard the funds.

PRO: Funds in ABLE accounts grow tax-free and are not subject to gift tax restrictions.

CON: Contributions to ABLE accounts are limited to $14,000 per year and can hold up to $100,000 without hurting a Supplemental Security Income (SSI) beneficiary's eligibility, whereas there is no limit on contributions to special needs trusts (although gift taxes could apply).

PRO: ABLE accounts are theoretically easy to set up with a local financial institution.

CON: Without the assistance of a qualified special needs planner, use of an ABLE account could seriously affect government assistance.

CON: If there are funds remaining in an ABLE account upon the death of the account beneficiary, they must be first used to reimburse the government for Medicaid benefits received by the beneficiary, and then the remaining funds will have to pass through probate (an often onerous court process) in order to be transferred to the beneficiary's heirs. If a special needs trust is used, there will be no probate and, in the case of a special needs trust established with funds that don't belong to the beneficiary, there will be no Medicaid payback.

As you can see, ABLE accounts will be useful tools in a variety of circumstances but they are not the only, or in some cases, the best solution when a person with special needs wants to save money. Before setting up an ABLE account, talk with your special needs planner to determine if you are eligible to use one and whether other instruments, like special needs trusts, may be more useful.

For more information about special needs planning in general and special needs trusts in particular, contact Attorney John D'Onofrio today.

As a member of the Academy of Special Needs Planning, John is constantly reviewing new laws and amendments in this area of law as well as attending seminars and continuing education classes relevant to special needs planning and trusts.

Call today to schedule a free initial consultation. Call today, get peace of mind today.

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