

Using ABLE Accounts in Special Needs Planning

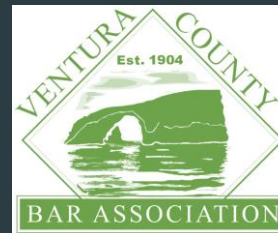
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Estate Planning & Probate Section

Ventura County Bar Association



What is an ABLÉ account?

- ▶ A savings and investment program for people with disabilities or special needs.
- ▶ It helps people save for the future while protecting their benefits.
- ▶ An alternative or complement to a special needs trust.
- ▶ An alternative to a spend down plan.
- ▶ ABLÉ accounts were created as part of the Achieving a Better Life Experience (ABLE) Act of 2014. The IRS is the oversight agency.
- ▶ They are also known as 529A accounts. They are professionally managed investment portfolios with very low fees.

ABLE Basics

- ▶ One account per individual
- ▶ Beneficiary is the owner of the funds
- ▶ Can only be opened by a beneficiary or an authorized individual:
 - ▶ Parent, guardian/conservator, agent under POA, spouse, sibling, grandparent, or representative payee
- ▶ Can be opened at any age, but you must have a disability that began before the age of 26 (this will change 1/1/26 to the age of 46)
- ▶ To be eligible, you either:
 - ▶ Are eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or
 - ▶ Can self-certify that your disability is on the SSA List of Compassionate Allowances or Blue Book (Listing of Impairments)

ABLE Basics, cont.

- ▶ Individuals participating in a non-ABLE employer-sponsored retirement plan are not eligible to open or add to an account
- ▶ Funding can come from the individual, others, or rollover of 529 plan
- ▶ All third-party funding is subject to the annual contribution limits (annual gift tax exclusion); currently \$19,000 per year
 - ▶ This includes rollovers
- ▶ If the Beneficiary is employed, they can contribute up to an extra \$15,060 each year from their earned income

ABLE Basics, cont.

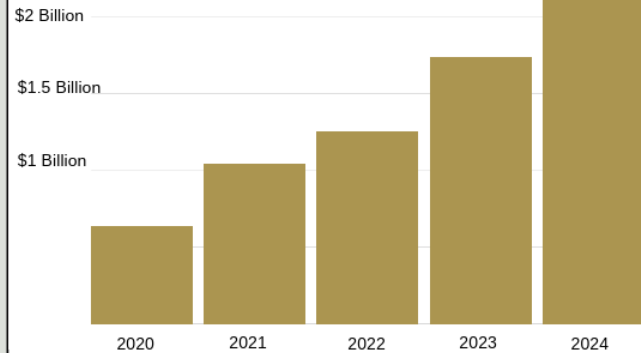


- ▶ Growth in the account accrues income tax free
- ▶ Distributions are tax-free if made for Qualified Disability Expense (QDE)
- ▶ May move from one ABLE account to another
- ▶ There are no “catch-up” or “superfund” contribution provisions to ABLE accounts as there are for 529 contributions
- ▶ Contributions are not tax-deductible or pre-tax
- ▶ Contributions are cash only (no stocks, securities, or other investments)

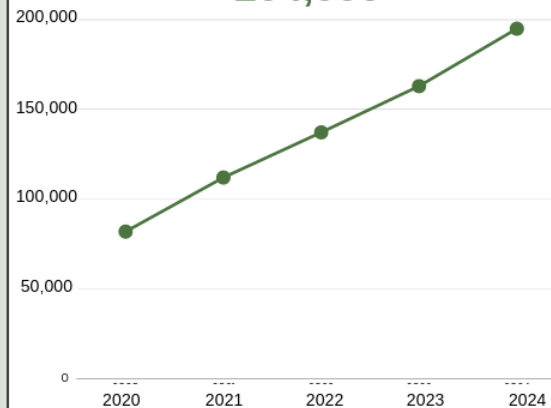
ABLE Accounts by the Numbers

ABLE plans change the way individuals with disabilities and their families build financial wellness today and plan for a bright financial future by empowering saving and investing for expenses while preserving access to federal means-tested benefits.

Total Assets +\$2.46 Billion



Total Accounts +204,000



Average Account Balance

+\$12,000

Before the Achieving a Better Life Experience (ABLE) Act, Americans with disabilities were allowed to have up to \$2,000 before their eligibility for certain government means-tested benefits could be reduced.

- ▶ 46 States + DC offer ABLE programs. Many programs allow out-of-state residents to enroll. California's ABLE program is called CalABLE.
- ▶ There are currently more than 204,000 total ABLE accounts (as of 3/31/25)
- ▶ Over \$2.46B in total account assets nationwide
- ▶ Average account balance = \$12,000

ABLE Accounts Protect Public Benefits

- ▶ ABLE accounts can help the individual save money, while protecting public benefits
- ▶ The first \$100,000 is an exempt asset for public benefit purposes
 - ▶ SSI, Medi-Cal, HUD/Section 8, CalFresh
- ▶ Medi-Cal will reinstate the \$130,000 asset limit on 1/1/26, so this is even more important in 2026
- ▶ If you are not receiving any means-tested benefits, you can save up to \$529,000 in an ABLE account
- ▶ ABLE is an asset shield, but not an income shield
 - ▶ Generally, income that is deposited into an ABLE account is still countable income
 - ▶ Interest earned on the ABLE account balance is not countable income

ABLE and SSI

- ▶ You can skip steps and potential issues with losing SSI benefits by setting up secure direct deposits from the SSA to the individual's ABLE account
- ▶ ABLE account QDEs are very broad, so ABLE funds may be used for In-Kind Support and Maintenance (ISM), unlike using SSI funds directly:
 - ▶ Housing (rent, mortgage, utilities, insurance)
 - ▶ For SSI purposes, housing expenses must be withdrawn and spent in the same calendar month
- ▶ For SSI, all distributions (qualified and non-qualified) are not countable income

SSI Examples

- ▶ Ruth withdraws \$1,000 from her ABLE account on August 15th, and puts the funds in her checking account. She intends to use the money to pay her September rent. She keeps the \$1,000 in her checking account until September 3rd, when she pays her September rent. The \$1,000 is a countable resource in September (but only for SSI purposes), because Jane held on to the money past the end of August.
- ▶ Sonia withdraws \$1,000 from her ABLE account on August 15th, and puts the funds in her checking account. She uses the \$1,000 to pay her September rent on August 30th. Because Sonia spent the housing money in the same month that she withdrew it, the \$1,000 is not a countable resource for SSI purposes.



What Happens to SSI Benefits When ISM is Spent from SSI Funds?

- ▶ Two methods of SSI reduction based on living arrangements:
 - ▶ Value of the One-Third Reduction (VTR):
 - ▶ Applies when:
 - ▶ SSI recipient lives in another's home for the entire month
 - ▶ Receives ISM from someone in the same household
 - ▶ Does not pay their share of the household shelter costs
 - ▶ **Result:** SSI check reduced by 1/3 of the Federal Benefit Rate (FBR) or **\$322.33**
 - ▶ Presumed Maximum Value (PMV):
 - ▶ Applies when VTR does not (e.g., living alone but a third party pays rent)
 - ▶ **PMV amount (2025): \$342.33**

What are QDEs?

- ▶ Any expense that helps the account holder maintain or improve their health, independence, or quality of life - at any age:
 - ▶ Education
 - ▶ Housing*
 - ▶ Transportation and travel
 - ▶ Employment training and support
 - ▶ Basic needs, including food
 - ▶ Recreation and entertainment
 - ▶ Health, preventative care, therapy, and support services (including service dogs and their care)
 - ▶ Assistive technology and related services (including cell phone)
 - ▶ Legal fees
 - ▶ Financial management and administrative services
 - ▶ Funeral and burial expenses
- 



ABLE Record Keeping

- ▶ You do not have to prove that withdrawals are QDEs at the time of withdrawal, but ABLE accounts report the total amount of an individual's withdrawals to the IRS, along with the date and time of each withdrawal to the SSA
- ▶ Keep receipts for QDEs in a secure area
- ▶ Record notes for the purchased item or payment for services and file them by date
- ▶ The IRS recommends keeping records for 3 years from the date you filed your original tax return, or 2 years from the date you paid the tax
- ▶ Scan receipts and notes and store them electronically



How to Withdraw Money from an ABLE Account

- ▶ Request a withdrawal by personal check mailed to the Beneficiary or Legal Representative
- ▶ Electronic Transfer to connected bank account
- ▶ Debit Card / Prepaid Card
 - ▶ CalABLE uses a Visa Debit Card
 - ▶ Load funds onto a prepaid card anytime from the ABLE account
 - ▶ Can track and categorize the spending online
 - ▶ Spending is generally not subject to benefits testing
 - ▶ Built-in account protection
 - ▶ No monthly fees
 - ▶ Money transferred to the prepaid card cannot be returned to the ABLE account

Death of Beneficiary

- ▶ Funds from CalABLE account can be used by their estate to repay any outstanding eligible expenses, funeral, and burial costs
- ▶ When CalABLE is notified of a Beneficiary's death, CalABLE will request proof of death and documentation from the executor or administration of the Beneficiary's estate
- ▶ CalABLE will suspend all account activity, except that the executor or administrator of the Beneficiary's estate will be permitted to take withdrawals from the account
- ▶ A Successor Designated Beneficiary may be designated by the account owner; must be a sibling, step-sibling, or half-sibling of the Beneficiary, and must also have a qualifying disability
- ▶ If there is no SDB, and no Medi-Cal payback, the remaining funds may be transferred to the Beneficiary's estate

Medi-Cal Recovery

- ▶ CalABLE accounts for CA residents are protected against Medi-Cal recovery
- ▶ However, CA may recover on assets that have transferred from a CalABLE account to an estate, if ALL of the following apply:
 - ▶ The deceased Medi-Cal member was aged 55 or older
 - ▶ The member leaves an estate that is subject to formal probate
 - ▶ The member received nursing facility services or home and community-based services, including related hospital and prescription drug services
 - ▶ The member is not survived by a spouse or registered domestic partner, child under 21 years of age, or disabled child of any age

ABLE Tax Reporting

- ▶ Beneficiary will receive a 1099-QA form for withdrawals and a 5498-QA form for contributions
- ▶ Third-party contributions are treated as completed gifts
- ▶ Employer contributions are treated as W-2 income to the employee
- ▶ Only non-qualified withdrawals have to be reported on income tax return
- ▶ Pay income tax + a 10% penalty on the earnings portion of the non-qualified withdrawal amount
- ▶ Benefits agencies may also count a non-qualified withdrawal as a resource

Special Needs Trusts v. ABLE Accounts

Special Needs Trust	ABLE Account
Potentially thousands to set up, plus ongoing fees	Around \$30/year, plus possible investment fees
Trustee must manage; potential court oversight	Beneficiary or representative can manage
Funds cannot be used for ISM without affecting SSI	Funds can be used for ISM
1 st Party - funds must be for “sole benefit” 3 rd Party - funds can benefit others	Funds do not have to be used for “sole benefit”
No contributions limits - earnings are taxed	Annual contribution limits - earnings are tax free
1 st Party - Medi-Cal payback 3 rd Party - No Medi-Cal payback	Medi-Cal payback - limitations apply
One disabled person can have many SNTs set up for them	Beneficiary can only have 1 ABLE account

Fund an ABLE Account with an SNT

- ▶ ABLE Accounts and Trusts can be used in conjunction
- ▶ Include ABLE distribution and funding language in the Trust document
- ▶ Can then use money for housing and ISM without affecting SSI
- ▶ Give some independence and control to the Beneficiary
- ▶ Diversify investments, and control of assets
- ▶ More flexibility in estate administration

Sample SNT Language

“Trustee, in their sole and absolute discretion, may make a distribution that will be treated as a contribution to the Beneficiary’s ABLE account, as defined under Internal Revenue Code Section 529A, for meeting the Beneficiary’s qualified disability expenses. Distributions can either be made as a lump sum or in monthly amounts designed to assist Beneficiary with ongoing care costs. In exercising Trustee’s discretion, the Trustee should consider:

- ▶ Person or entity managing the ABLE account and their experience in managing funds;
- ▶ Benefit of using the ABLE account funds to pay for Beneficiary’s needs without triggering an In-Kind Support and Maintenance (ISM) penalty from the SSA; and
- ▶ Possibility that ABLE account funds could be used for a Medi-Cal payback
- ▶ The annual gift tax exclusion amount and other transfers made to the ABLE account for the Beneficiary in the calendar year

Investment in a qualified ABLE program will not be considered a delegation of investment responsibility under any applicable statute or other law.”

Using Both an SNT and ABLE Account

3rd Party SNT



Pays for
Rent /
Utilities



ISM Reduction
(About \$340 / month
deducted from SSI benefits)

3rd Party SNT



Transfer up
to \$1583.33
/ month



Gov't deposits
SSI Monthly \$\$

+

ABLE
Account



Pay for Rent
/ Utilities

Using Both an SNT and ABLE Account

1st Party SNT



Pays for
Rent /
Utilities



ISM Reduction
(About \$340 / month
deducted from SSI benefits)

1st Party SNT



Deposit up
to \$15,560
of income
per year



Gov't deposits
SSI Monthly \$\$

+

ABLE
Account



Pay for Rent
/ Utilities

Can an ABLE Account be Used for a Civil Settlement Award?

- ▶ Yes. Although no more than the annual gift exclusion can be deposited in an ABLE account in a calendar year, a structured settlement annuity could be purchased, with the ABLE account as the annuity payee
- ▶ Example:
 - ▶ A child receives a \$150,000 settlement
 - ▶ \$19,000 is directed to the CalABLE account in the Order, with the remaining \$131,000 purchasing a structured settlement annuity, which would fund the ABLE account for the annual exclusion amount each year
 - ▶ A complex SNT is avoided

Practice Tips...

- ▶ When establishing an ABLE account, it is best to at least partially complete the Change Authorized Legal Representative Form, in case of the death or incapacity of the ALR
- ▶ If applicable, designate a Successor Beneficiary (if there is a disabled sibling)
- ▶ Have SSI direct deposited to the ABLE account for ease of spending
- ▶ Only request a withdrawal when you are ready to spend it, and keep corresponding receipts/invoices
- ▶ In general, cash to beneficiary = bad, but an ABLE account makes spending money easier to administer

Advantages of an ABLE Account

► Pros:

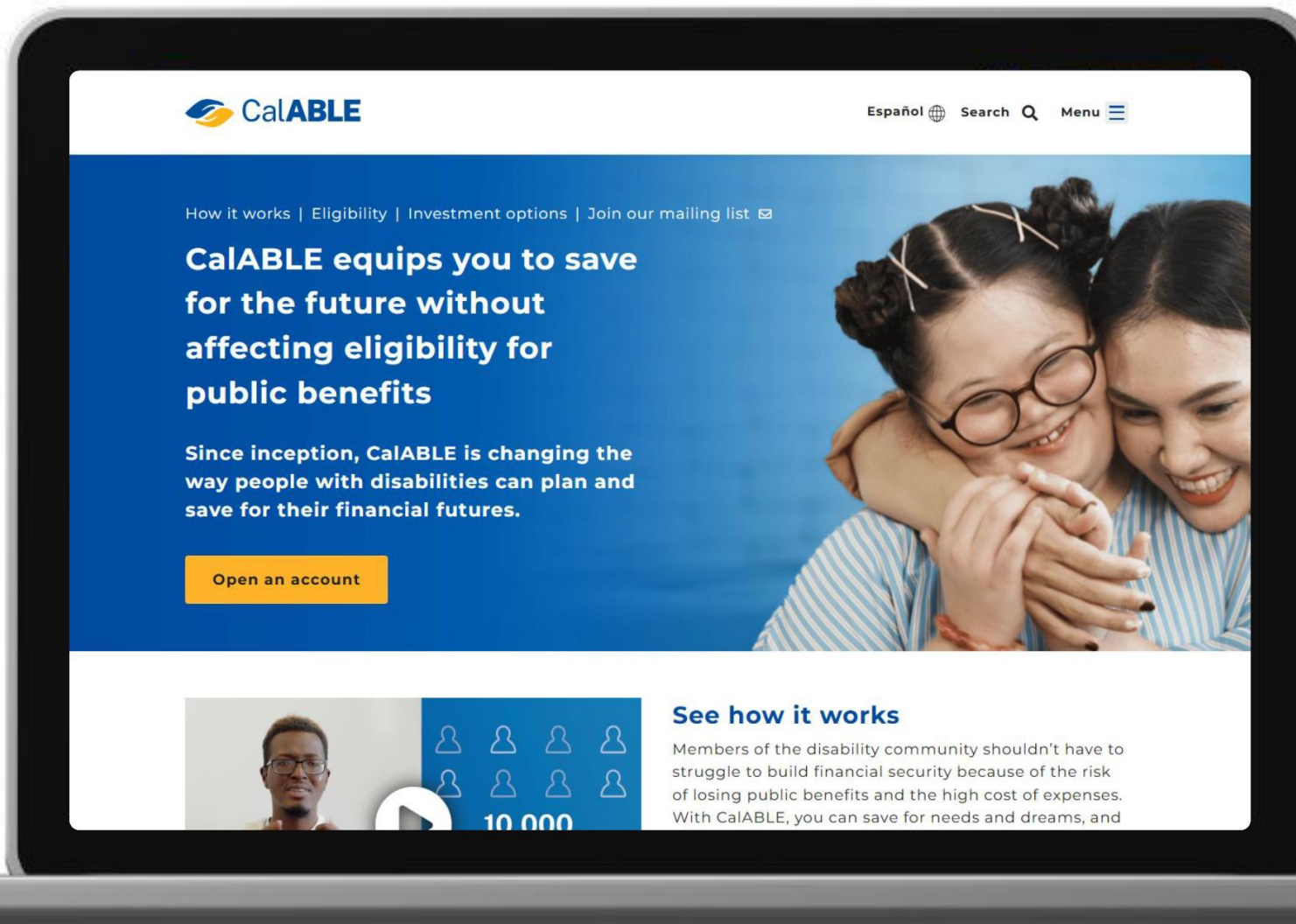
- A person with special needs can set up their own account with their own money instead of relying on a parent, grandparent, or court to establish a 1st party SNT for them
- A person with special needs can manage the funds in their own ABLE account, making them less reliant on others for assistance and making it easier to access funds
- Funds in ABLE accounts grow tax-free
- ABLE savings plans are theoretically easy to set up and cost effective

Disadvantages of an ABLE Account

- ▶ ABLE Accounts do have age restrictions (must have qualifying diagnosis before age 26, or 46 in 2026)
- ▶ Some people with disabilities can be taken advantage of if they have control of their own funds. If an SNT is utilized to hold funds instead, a trustee has a legal obligation to safeguard the funds
- ▶ Contributions to ABLE accounts are limited to \$19,000 per year and can hold up to \$100,000 to be an exempt asset for SSI (\$130,000 for Medi-Cal), whereas no limits apply on contributions to an SNT
- ▶ If ABLE funds are withdrawn for non-qualified disability expenses, public benefits could be negatively affected
- ▶ If there are funds remaining in an ABLE account upon the death of the account beneficiary, they may be used to reimburse Medi-Cal expenses. Then the remaining funds may have to pass through probate



Get started today: CalABLE.ca.gov



Questions?

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