

CONTRIBUTIONS

Average ABL account balance = **\$5,000**

As of September 30, 2019	State	Balance	Assets	Liabilities	Net Assets
Alabama	National	1,100,000	1,100,000	0	1,100,000
Alaska	National	1,100,000	1,100,000	0	1,100,000
Arizona	National	1,100,000	1,100,000	0	1,100,000
Arkansas	National	1,100,000	1,100,000	0	1,100,000
California	National	1,100,000	1,100,000	0	1,100,000
Colorado	National	1,100,000	1,100,000	0	1,100,000
Connecticut	National	1,100,000	1,100,000	0	1,100,000
Delaware	National	1,100,000	1,100,000	0	1,100,000
District of Columbia	National	1,100,000	1,100,000	0	1,100,000
Florida	National	1,100,000	1,100,000	0	1,100,000
Georgia	National	1,100,000	1,100,000	0	1,100,000
Hawaii	National	1,100,000	1,100,000	0	1,100,000
Idaho	National	1,100,000	1,100,000	0	1,100,000
Illinois	National	1,100,000	1,100,000	0	1,100,000
Indiana	National	1,100,000	1,100,000	0	1,100,000
Iowa	National	1,100,000	1,100,000	0	1,100,000
Kansas	National	1,100,000	1,100,000	0	1,100,000
Kentucky	National	1,100,000	1,100,000	0	1,100,000
Louisiana	National	1,100,000	1,100,000	0	1,100,000
Maine	National	1,100,000	1,100,000	0	1,100,000
Maryland	National	1,100,000	1,100,000	0	1,100,000
Massachusetts	National	1,100,000	1,100,000	0	1,100,000
Michigan	National	1,100,000	1,100,000	0	1,100,000
Minnesota	National	1,100,000	1,100,000	0	1,100,000
Mississippi	National	1,100,000	1,100,000	0	1,100,000
Missouri	National	1,100,000	1,100,000	0	1,100,000
Montana	National	1,100,000	1,100,000	0	1,100,000
Nebraska	National	1,100,000	1,100,000	0	1,100,000
Nevada	National	1,100,000	1,100,000	0	1,100,000
New Hampshire	National	1,100,000	1,100,000	0	1,100,000
New Jersey	National	1,100,000	1,100,000	0	1,100,000
New Mexico	National	1,100,000	1,100,000	0	1,100,000
New York	National	1,100,000	1,100,000	0	1,100,000
North Carolina	National	1,100,000	1,100,000	0	1,100,000
North Dakota	National	1,100,000	1,100,000	0	1,100,000
Ohio	National	1,100,000	1,100,000	0	1,100,000
Oklahoma	National	1,100,000	1,100,000	0	1,100,000
Oregon	National	1,100,000	1,100,000	0	1,100,000
Pennsylvania	National	1,100,000	1,100,000	0	1,100,000
Rhode Island	National	1,100,000	1,100,000	0	1,100,000
South Carolina	National	1,100,000	1,100,000	0	1,100,000
South Dakota	National	1,100,000	1,100,000	0	1,100,000
Tennessee	National	1,100,000	1,100,000	0	1,100,000
Texas	National	1,100,000	1,100,000	0	1,100,000
Utah	National	1,100,000	1,100,000	0	1,100,000
Vermont	National	1,100,000	1,100,000	0	1,100,000
Virginia	National	1,100,000	1,100,000	0	1,100,000
Washington	National	1,100,000	1,100,000	0	1,100,000
West Virginia	National	1,100,000	1,100,000	0	1,100,000
Wisconsin	National	1,100,000	1,100,000	0	1,100,000
Wyoming	National	1,100,000	1,100,000	0	1,100,000
Total	National	1,100,000	1,100,000	0	1,100,000

CONTRIBUTIONS

Contributions are after-tax dollars, grow tax-free

- QTP
- Roth IRA

Aggregate contributions to an ABL account subject to the overall limit matching the state limit for Section 529 accounts

- Colorado ABL limit is \$400,000.
- \$400,000 / \$15,000 = 26+ years
- No "catch-up" or "lump-sum" contributions as in QTPs

Examples of payments that might be direct-deposited into an ABL account but *still* are counted as income as they otherwise would be:

- Wages
- Benefit payments (Title II, Veterans Administration, PETI, pensions, etc.)

CONTRIBUTIONS

POMS SI 01130.740.B.2: "Contributions must be in cash and may be made in the form of cash or a check, money order, credit card, electronic transfer, Gift of Independence card, or a similar method."

- No appreciated assets
- No stocks, securities, etc.

The total amount of annual contributions that an ABL account can receive from *all* sources is limited to the amount of the per-donor gift-tax exclusion in effect for a given calendar year (\$15,000 for 2020).

- *Warchol v Kings County Office of Education*, 2018 WL 118 5052 (ED Calif, March 6, 2018)

Child support?

- *Kirby v Semeyn*, 2017 Ark App 556, 531, S.W. 3d 462 (October 25, 2017)

THE GOOD



Most contributions do not count as income.

- POMS SI 01130.740.C.1 excludes the following as countable income:
 - Rollovers from a family member's ABLE account
 - Rollovers from a 529 QTP
 - Contributions in excess of the \$15,000 annual limit if the ABLE beneficiary worked and did not contribute in the same taxable year to a defined contribution plan, annuity contract under section 403(b) of the IRC, or eligible deferred compensation plan
 - Contributions from an employed ABLE beneficiary annually up to the lesser of:
 - Federal Poverty Level (FPL) for a one-person household for the preceding calendar year
 - The amount of the ABLE beneficiary's earnings and other compensation
- However, POMS SI § 01130.740.C.1 states that "income received by the designated beneficiary and deposited into his or her ABLE account is income to the designated beneficiary."
 - POMS SI 01130.740.C.1.a - "An individual cannot use direct deposit to avoid income counting."

THE BAD



- \$100,000 balance disqualification for SSI benefits
- Small annual contribution limit (\$15,000 annually)
- Age restrictions (must be able to prove onset of disability before age 26)
- Non-SSI/SSDI recipients must obtain a doctor's (M.D. or D.O.) certification of disability.
- Various state-to-state differences in administration of ABLE programs
- Medicaid Estate Recovery in most states
 - Other options include 3rd-party SNT

THE BAD



Fraud & financial exploitation

- National Adult Protective Services Association
 - 1 in 20 older adults or people with disabilities have reported some form of financial abuse.
 - ATM withdrawals, agent under POA, etc.

Asset or resource of the beneficiary

- NOT for SSI determination
- Creditor proceedings
 - Pub. L. No. 113-295 § 104 amends the bankruptcy code to exclude ABLE account funds from a person's estate if
 - "(1) the designated beneficiary of such account was a child, stepchild, grandchild, or step grandchild of the debtor;
 - (2) such funds are not pledged or promised to any entity in connection with any extension of credit and are not excess contributions to an ABLE account; and
 - (3) such funds do not exceed \$6,225 during a specified time period."
 - No such protection for other creditor proceedings such as divorce, foreclosure, etc.

THE BAD



Medicaid Estate Recovery

- Few exceptions (CA, OR, PA)
- Limited beneficiary designations
 - Typically beneficiary estate
 - Subject to Estate Recovery
 - Capacity - will execution
 - Laws of intestacy
 - Contrast = 3rd Party Trust

TRUSTEE COORDINATION

- SNT - no ISM payments without potential benefits reduction
- POMS SI 01130.740.B.2 - "Contributions [to an ABLÉ account] may be made by any person. ("Person," as defined by the Internal Revenue Code (IRC), includes "an individual, **trust**, estate, partnership, association, company, or corporation.")"
- HUD/Section 8 considerations
 - Regular distributions = income
 - Varies state-to-state or even county-to-county
 - HUD Notice H-2019-06
- Fraud & Financial Exploitation
- Conversion of funds' nature
 - Full discretion to no discretion
 - Settlor intent
 - Drafters - Consider inclusion of ABLÉ transfer provisions in your trust instruments.

RECENT CHANGES - Tax Cuts and Jobs Act (sunsets after 2025)



529 QTP Rollover

- Rollover limited amounts of a QTP to an ABLÉ account of the same beneficiary
 - IRC § 529(c)(3)(C)(i)(III)
- Rollover limited amounts of a QTP to an ABLÉ account of a family member of the same beneficiary
- Not subject to income tax if distributions are contributed to an ABLÉ account within 60 days
- Subject to annual gift-tax exclusion amount (IRC § 2503(b) - \$15,000 for 2020)
 - Should transfer or contribution plus all other contributions exceed \$15,000 in a tax year, rollover is subject to income tax and 10% additional tax under IRC § 529(c)(6), as applicable.

THE UNKNOWN

Signature Authority

A person with signature authority can establish and administer an ABE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. Signature authority is not the equivalent of ownership. The person with signature authority must be the designated beneficiary's agent acting under power of attorney, or if none, a parent or legal guardian of the designated beneficiary. Always consider the designated beneficiary to be the owner of the ABE account, regardless of whether someone else has signature authority over it.

POMS SI 01130.740.B.6

ABLE beneficiary = account owner

- Age of majority
Capacity
CA Probate Code 810
Large balances

Horizontal lines for notes

THE UNKNOWN

Beneficiary Intent

- Esoteric, hard to document/prove
Life changes
Beneficiaries change their mind

Example:

ABLE account beneficiary takes a non-housing-related QDE, changes their mind and uses funds for non-QDE or housing-related QDE.

Three boxes: SSA presumption of intent assigned, Funds are a countable resource from the 1st of the month in which funds were spent, If intent changes and beneficiary has not spent the funds, retained funds are a countable resource the 1st day of the following month.

Horizontal lines for notes

THE UNKNOWN

Beneficiary Intent - Fact Patterns

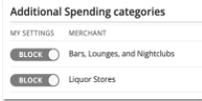
Three numbered fact patterns: 1. Peter takes a \$25,000 distribution... 2. Brad takes a \$7,000 distribution... 3. Steve takes a \$7,000 distribution...

Horizontal lines for notes

"MILES" CASE STUDY

OPTIONS

- Beware HUD/Section 8!
- Purchases/receipts:
 - Consider credit card, etc., for ABLE.
 - True Link Card for SNT (reporting)
- Substance abuse?



"MILES" CASE STUDY

ABLE

- Recharacterize 529 Plan to ABLE account.
- Transfer from SNT to ABLE when needed.
- No potential SSI reduction for housing or basic living expenses
- Circumvents restrictive trustee
- Trust longevity
- Succession planning
- Reporting/documentation
- Ease of use
- Promotes independence



NOT ALL ABLE ACCOUNTS OR SNTS ARE CREATED EQUAL

Consider:

- Ease and cost of opening account
- Ongoing costs of investments, administration, debit card, etc.
- Access to funds (debit card, restrictions on withdrawals, etc.)
- Investment options
- Leadership and values of organization (expertise, commitment to community, focus on self-determination)
- Biggest question: Is there alignment with intended use of the account (daily spending, long-term investing, family gifting, etc.)?

Compare options:

- New site: www.ABLEcompare.org
- <https://specialneedsanswers.com/pooled-trust>



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