



The ABLE Act: A way for people with disabilities to own assets while protecting their government benefits

The Achieving a Better Life Experience (ABLE) Act was signed into law by President Barack Obama on December 19, 2014. The purpose of the ABLE Act is to allow disabled individuals and their loved ones to set aside funds to enhance and improve the disabled person's quality of life without affecting his or her eligibility for means-tested government benefits.

The ABLE Act allows for the creation of investment accounts that are much like 529 college savings accounts. Contributions up to the amount of the current annual gift tax exclusion, currently \$16,000, can be deposited into the account annually. Contributions can be made by the disabled person himself or herself, and the disabled person's family and friends. The investments in the account will be allowed to grow tax-free. The funds in the account will not be counted as a resource for the disabled individual unless the balance of the account exceeds \$100,000. The states that choose to participate will administer and oversee ABLE Act accounts.

Prior to the passage of the ABLE Act, if a disabled individual eligible for means-tested government benefits received a small inheritance or personal injury settlement, that person or his or her family would have had to either incur the expense of working with an attorney to set up a special needs trust or, alternatively, spend down the inheritance or settlement funds in order to again qualify for benefits. Now, the disabled individual has the option to keep up to \$16,000 of the funds in an ABLE account. Funds in the account can be used for "qualified disability expenses." These expenses include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, and funeral and burial expenses.

Not every disabled individual can have an ABLE account. The disabled individual's disability must have begun by age

twenty-six (26). And unlike a third-party special needs trust, the funds left in the account at the disabled individual's death are to be paid back to the state for the amount of medical assistance provided, even if the funds were contributed by someone other than the disabled person. Even with these drawbacks, the passage of the ABLE Act will likely significantly improve the lives of many disabled persons.

DISCLAIMER – The information contained in this article should be used for general purposes and should not be construed as legal advice. Consult with your own attorney if you have specific legal questions.

Geoff Bernhardt and Julie Nimnicht are elder law attorneys in Portland, Oregon. For more information on their firm and on estate planning issues, please visit their website at www.elderlawpdx.com.

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**Geoff Bernhardt
Julie Nimnicht
Attorneys at Law**

**Law Offices of
Geoff Bernhardt & Julie Nimnicht**
5603 S Hood Avenue
Portland, OR 97239
503-548-4000

info@elderlawpdx.com
www.elderlawpdx.com
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