

# Estate Planning Update – 09.22.21

## Section 1.01 Here When You Need Us

Throughout the pandemic, our team has collaborated to implement creative and resourceful solutions to meet the needs of our clients in this uniquely challenging time. While our Chambliss Conference Center is open for scheduled in-person meetings, we continue to be available to meet virtually, as well.

Please do not hesitate to contact us if we can assist you with your elder law, special needs planning, or estate planning needs.

— Dana, Greg, and your Chambliss team

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## Section 1.02 ABLE Accounts vs. Special Needs Trusts: Which Is Better for Your Child With a Disability

By: Leah Mitchell

Any parent of a child with a disability has likely heard of a “special needs trust.” As information has become more easily available online, a simple Google search for “special needs trust” is likely to garner hundreds of results. More recently, ABLE accounts have gained popularity as a common financial planning tool for individuals with disabilities. But what are the primary differences between a special needs trust and an ABLE account? Which is better for your child?

There are two main types of special needs trusts: a first-party “payback” special needs trust and a third-party special needs trust.

A first-party special needs trust is funded with assets that already belong to the person with a disability. Some examples are a bank account or Uniform Transfers to Minors Act (UTMA) account, assets gifted or inherited outright, and lawsuit settlement funds. Generally, a first-party trust may only be funded with assets of a person with a disability under age 65. When drafted properly, assets held in a first-party special needs trust do not count as assets of an individual for purposes of need-based disability benefits, such as SSI and Medicaid. However, this type of trust is also commonly referred to as a “payback trust” since the trust assets must be used to pay back the state for any Medicaid benefits the individual received during his/her lifetime.

A third-party special needs trust is a trust that is funded with assets of someone other than the person with a disability. Usually, a third-party trust is created by parents, grandparents, or other family members who wish to give assets to a child with a disability, either during life or at death. It is a common estate planning tool for families with a child who has special needs. Unlike the first-party trust, there is no payback required on the death of the beneficiary — remaining trust assets may pass on to contingent beneficiaries selected by the grantor.

An ABLE account is a tax-advantaged savings account for individuals with disabilities, created pursuant to federal legislation known as the Achieving a Better Life Experience Act of 2014 (ABLE Act). The primary purpose of the ABLE Act was to provide an alternative tax-free savings option similar to a [qualified tuition/529 plan](#) for parents of children with disabilities.

ABLE account funds grow income tax-free, and so long as funds are used for qualified disability expenses, are not subject to income tax when distributed. The ABLE account does not impact the beneficiary's means-tested benefits, such as SSI and Medicaid, as long as the ABLE account balance is less than \$100,000. Upon the death of the ABLE account beneficiary, the remaining funds must be used to reimburse the state for Medicaid payments made on behalf of the beneficiary.

[Visit the ABLE National Resource Center to Compare ABLE Accounts Between States](#)

Given the tax benefits, an ABLE account is an effective way to save money for your child's benefit without causing the child to become ineligible for any means-tested benefits they would otherwise receive. However, it is not a solution that should be used in isolation. Given the \$100,000 limit and mandatory "payback" at the beneficiary's death, an effective estate plan for any parent of a child with a disability will most likely also include a special needs trust.

For additional considerations, please read "[ABLE Account or Special Needs Trust – Which One Is Best?](#)"

If you would like to learn more about ABLE accounts, special needs trusts, or any of the various estate and special needs planning strategies available to you, please reach out to me, Leah Mitchell, or another member of our [Estate Planning](#) team.

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## Estate Planning Resources



### **Pandemic Payments Now Won't Affect SSI Benefits or Eligibility at All**

Pandemic-related financial assistance will no longer affect an individual's eligibility for Supplemental Security Income (SSI) or the benefit amount, the Social Security Administration (SSA) has announced. The assistance includes a long list of pandemic payments, ranging from COVID-19 relief checks to state unemployment assistance...

[Read More](#)



### **Can a Marriage Be Annulled After One Spouse's Death?**

Marriage is supposed to be “until death do us part,” but after one spouse dies, is it possible for a court to declare a marriage invalid (annulled)? It can happen, as a Nebraska widower recently learned, but only in certain circumstances...

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### **You May Be Overestimating Your Social Security Benefits**

Studies have found that workers overestimate how much they will receive in Social Security benefits when they retire. Having a good understanding of the realities can help you plan for retirement...

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## Also check out...

### [Chattanooga Therapeutic Recreation Services Fall Newsletter](#)

In the fall newsletter, you can expect to find several activities and events. Through the Therapeutic Recreation Division of the Chattanooga YFD Department programs, education and advocacy, individuals can build confidence, improve physical and cognitive abilities, expand support and social networks; and enhance overall quality of life.

### [New TV Series Spotlights Entrepreneurs With Disabilities](#)

The documentary series "Born For Business" will premiere with 10 episodes on NBCUniversal's streaming service Peacock. The show focuses on the ups and downs of running a small business — all amid the challenges posed by the COVID-19 pandemic — for individuals with disabilities.

### [Social Security reports nearly 400,000 more beneficiary deaths in 2020 than 2019](#)

Last week, for the first time, the Social Security Administration (SSA) released information on the number of beneficiaries who died in 2020, the year the COVID-19 pandemic began. There were nearly 400,000 more beneficiary deaths in 2020 than the agency tabulated for 2019, representing a 17% year-over-year increase.

### [Hamilton County Launches Text-Message Outreach to Positive COVID-19 Cases](#)

The Hamilton County Health Department launched a text-message COVID-19 case investigation system beginning Wednesday, September 8, 2021, in conjunction with the Tennessee Department of Health. Residents who test positive for COVID-19 through a reportable testing mechanism (PCR or antigen) may receive a text-message from the Health Department asking them to complete their case investigation online.

### [Washington Post Story – Child Wrote to a WWII Vet, 12 Years Later, They Met](#)

Dashauna Priest recalls sitting in her third-grade classroom 12 years ago in Lorain, Ohio, writing a heartfelt thank-you letter to a World War II veteran whom she did not know. On July 23, Priest and the veteran met him in person.

### [Surgical masks reduce COVID-19 spread, large-scale study shows](#)

A large, randomized trial led by researchers at Stanford Medicine and Yale University has found that wearing a surgical face mask over the mouth and nose is an effective way to reduce the occurrence of COVID-19 in community settings.

### [Social media's 70-up 'Grandfluencers' Debunking Aging Myths](#)

Learn from several 'grandfluencers' who are using their digital platforms to inspire others through categories including health, wellness, beauty, and style.

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## Just for Fun

### [Dreamnight Boo in the Zoo](#)

Join the Chattanooga Zoo for their annual [Dreamnight Boo in the Zoo](#) event on Wednesday, October 15, 2021, from 5-8 p.m. This event welcomes all with chronic illnesses, disabilities, or special needs along with their families and caregivers for a no-cost evening filled with fun, merry-not-scary decorations, and furry friends!.



Source: [Chattanooga Zoo](#)

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