

# UPDATES IN SPECIAL NEEDS PLANNING

Ellen Cookman, Esq.  
Cookman Law, PC  
Palo Alto, CA

[www.cookmanlaw.com](http://www.cookmanlaw.com)



# ELLEN S. COOKMAN, ESQ.

Certified Specialist, Estate Planning, Trust and Probate Law,  
The State Bar of California Board of Legal Specialization

Principal at Cookman Law, PC

J.D., UC Berkeley School of Law

LL.M. in Estate Planning, Trust and Probate, Golden Gate  
University

Law Clerk, Chief Judge Anthony J. Scirica, Third Circuit Court  
of Appeals (Philadelphia, PA)

California State bar No. 227833

Parent of child with special needs



## SPECIAL NEEDS PLANNING GOALS

one

- Maximize quality of life

two

- Protect the child/sibling

three

- Maximize independence

four

Maximize public benefits

five

Name “surrogate parents”

six

Avoid court system



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# PUBLIC BENEFITS



# WHICH PUBLIC BENEFITS DOES CHILD RECEIVE?

## Income Stream

## Health Insurance

Needs Based

### Supplemental Security Income (SSI)

**Monthly Income limit:** \$1,971/mo  
**Resource Limit:** \$2000  
**Max. Monthly Payment:** \$1,206.94/mo

Earned income decreases SSI 50¢/every \$1 of income; unearned income decreases SSI \$1/every \$1 of income

\$1



Needs Based

### Medi-Cal (and IHSS)

**Monthly Income limit:** \$1,799.75/mo  
**Resource Limit:** None in 2024; \$130,000 starting 1/1/26

Includes *earned* and *unearned* income

Entitlement Based

### Social Security Disability Insurance (SSDI)/Child Disability Benefits (CDB)

**Monthly Income Limit:** \$1,550/mo  
**Resource Limit:** None

Only *earned* income interferes

2 years



Entitlement Based

### Medicare

**Monthly Income Limit:** None  
**Resource Limit:** None

Note: higher income --> higher adjustment amount



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## SPECIAL NEEDS TRUSTS



## WHAT IS A SPECIAL NEEDS TRUST?

Irrevocable trust

Holds assets for disabled person's benefit

DOES NOT interfere with public benefits

Like a safety net!

WHAT CAN  
A SNT PAY  
FOR?

Just about  
anything!

“ ‘**Special needs**’ then encompasses the very broad range of everything else a human being needs in order to live, thrive, and realize his or her potential in life.”

*McGee vs. State of Department of  
Health Care Services (2023)*





Third Party SNT



First Party SNT

WHICH TYPE OF SNT TO ESTABLISH?

## 3 TYPES OF SPECIAL NEEDS TRUSTS

Type of SNT	Source of Funds	Who Establishes	Distribution on Death
Third Party SNT	Anyone except beneficiary's funds	Anyone except beneficiary	Grantor's wishes
First Party (d)(4)(A) SNT	Disabled beneficiary's funds before age 65	Beneficiary, parent, grandparent, Guardian, Court	Medi-Cal payback; then remainder beneficiaries
(d)(4)(C) Pooled SNT	Disabled beneficiary's funds	Beneficiary, parent, grandparent, Guardian, Court	Non-profit Trustee; or, Medi-Cal payback, then remainder beneficiaries



## CHOICE OF TRUSTEE

- Family member
- Friend
- Private Professional Fiduciary
- Bank or Trust Company
- Nonprofit
- Pooled Trust
- Combination



A hand holding a magnifying glass over a blurred city night scene with bright lights. The magnifying glass focuses on a specific area of the city street, showing buildings and lights in detail, while the rest of the scene is out of focus.

## OVERSIGHT FOR SNTs?

- Typically no court involvement
- Trust Protector
- Co-Trustees
- Advisory Committee



# Trust Protector

Monitors the trustee's actions to ensure proper trust management

- Main Trust Protector powers:
    - Remove and replace trustee
    - Review/approve accountings
    - Modify trust provisions to adapt to changes in laws or unforeseen changes to the beneficiary's circumstances
      - avoids court!
  - Facilitates communication between the beneficiary and trustee, but does not participate in day-to-day trustee decisions
  - Named in irrevocable trust
  - Generally, no fiduciary duty
- 





## MEMORANDUM OF INTENT

*This is a separate document from the special needs trust.*

Informal letter from parent:

- What makes child happy/sad?
- Food restrictions?
- Housing preferences
- Favorite activities

## STANDALONE vs. TESTAMENTARY

### Standalone Special Needs Trust

- Can accept gifts during settlors' lifetimes
- Easier for SSA and DHCS to review

OR



### Revocable Trust

#### Article 6 Testamentary Special Needs Trust

- Easier to draft
- Useful if SNT may not be funded



Cash Accounts



Investment Accounts



Real Estate



Inheritances and other gifts



Settlements



Retirement Accounts



Life Insurance

## FUNDING SPECIAL NEEDS TRUSTS

*What types of assets can a special needs trust hold?*



# DYNASTY TRUST

- For neurotypical children, or for children receiving SSDI and/or Medicare only
- Beneficiary OR someone else can act as trustee
- Irrevocable, Non-Grantor Trust
- Protection from spouses, creditors
- Estate tax savings to next generation





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ABLE  
ACCOUNTS:

RULES AND  
BENEFITS



## WHAT IS AN ABLE ACCOUNT AND WHY USE ONE?

### **ABLE (Achieving a Better Life Experience)**

Accounts are tax-advantaged savings accounts for individuals with disabilities and their families.

- Save for disability-related expenses (no Medi-Cal payback requirement when using CalABLE account);
- Earned income grows tax-free and qualified withdrawals are tax-free;
- Does not interfere with public benefits (with limitations); and
- Contribution limits of \$19,000 per year (for 2025) from all sources.

## ABLE ACCOUNT: RULES

- To be used only for “qualified disability expenses”
- To be eligible, disability must have manifested before age 26 (increasing to age 46 in 2026)
- Eligible individuals can open the account for themselves, or an authorized individual (parent, legal guardian/conservator or power of attorney) can open an account on their behalf.
- Beneficiary or Authorized Legal Representative (ALR) can manage the account
- Anyone can make contributions directly to an ABLE account
- Only one ABLE account can be established per disabled individual



## ABLE ACCOUNT & PUBLIC BENEFITS

- SSI suspended if total amount in account exceeds \$100,000, but can continue to receive Medi-Cal
- California residents using CalABLE accounts won't have a Medi-Cal reimbursement claim upon their death; ABLE accounts established in other states (as of 1/23) WILL be subject to reimbursement claim

# WHAT IS A QUALIFIED DISABILITY EXPENSE?

A **Qualified Disability Expense** is ANY expense that is incurred as a result of living with a disability and is intended to improve quality of life. Qualified expenses include, but are not limited to:

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Education

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Health and wellness

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Housing (should be spent in same month as withdrawn from ABLÉ account)

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Transportation

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Legal Fees

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Financial Management

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Employment training and support

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Assistive Technology

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Personal support services

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Oversight and monitoring

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Funeral and burial expenses

# CONTRIBUTION LIMITS

- **\$19,000** annual contribution cap (for 2025)
- **\$100,000** total cap for SSI recipients (contributions + earnings)
- **\$529,000** total contribution cap for ABLE account (in California)

*Note: every state has its own total contribution cap*



# SAVINGS AND INVESTMENT OPTIONS

Investment options vary across ABLE plans, but most plans offer multiple portfolio options based on risk tolerance and investment goals:

- **Long-term savings:** Beneficiary might consider a diversified portfolio to maximize growth potential over time.
- **Short-term use of qualified expenses:** The FDIC-Insured Portfolio offers protection against short-term market fluctuations, ensuring funds are readily available when needed.
- **Long-term savings and short-term use of funds:** Beneficiary might consider spreading the funds among several portfolios.







## ABLE TO WORK

- Beneficiaries earning income from employment can contribute more than \$19,000 annual cap, up to the Federal Poverty Level, currently \$15,060 for a single person, if not participating in employer's retirement plan.
  - So potential maximum contribution is **\$34,060** per year.
  - *Note:* this federal rule was set to expire in 2026, but the OBBBA made this rollover option permanent.

## ROLL OVER TO 529 PLAN

- You can roll over funds between 529 College Savings Plans and CalABLE accounts for the beneficiary and their siblings, as long as the total rolled over amount is within the annual CalABLE contribution limit (\$19,000 in 2025).
- *Note:* this federal rule was set to expire in 2026, but the OBBBA made this rollover option permanent.



# GIFT TAXES: ABLE ACCOUNTS VS. SNTs

\$10,000 from  
grandma

\$9,000 from  
cousin



ABLE Account

- Both gifts qualify for gift tax annual exclusion (up to \$19,000)
- No tax returns or accounting required

\$10,000 from  
grandma

\$9,000 from  
cousin

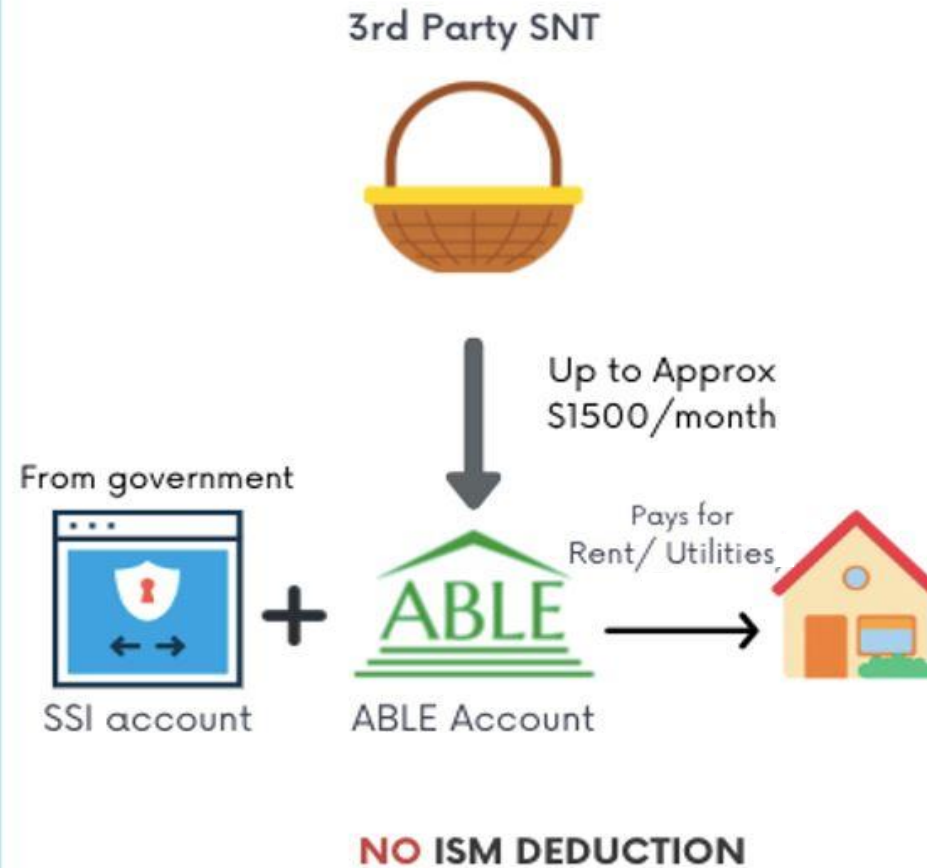


3rd Party SNT

- No Annual exclusion available
- Grandma & Cousin must both file gift tax returns (form 709) the following year in April
- Trustee must obtain Tax ID #
- Start filing yearly fiduciary tax returns



# USING ABLE ACCOUNTS TO PRESERVE SSI BENEFITS





# SETTING UP A CalABLE ACCOUNT

## Bank Account

Set up checking or savings account at favorite bank

## CalABLE Website

Set up an account on CalABLE website:

<https://www.calable.ca.gov/>

## Required Information

- Beneficiary's SSN;
- - Authorized legal representative's SSN; and
- - Bank account information

## Access to Funds

Reloadable, prepaid Visa debit card is now available

## ABLE VS. 3<sup>RD</sup> PARTY SNT VS. 1<sup>ST</sup> PARTY SNT

Issues	ABLE Account	3 <sup>rd</sup> Party SNT	1 <sup>st</sup> Party SNT
Who can use?	Only persons disabled before age 26 (increases to age 46 in 2026)	Any person with a disability	A person with disability under age 65
Who can fund?	Anyone, including person with disability	Anyone, except person with disability (must use 1 <sup>st</sup> Party SNT)	The person with a disability, conservator, guardian, agent, court
How many can a person have?	One	Unlimited	Unlimited
Who can control?	Person with a disability, guardian, Conservator, or agent	Anyone except the person with a disability and their spouse	Anyone except the person with a disability and their spouse
Medi-Cal Payback	No (if using CalABLE account)	No	Yes
Who can inherit on the death of person with disability	Estate of disabled person	Whomever is named in the document	Whomever is named in the document

## ABLE vs. 3<sup>RD</sup> PARTY SNT vs. 1<sup>ST</sup> PARTY SNT

Issues	ABLE Account	3 <sup>rd</sup> Party SNT	1 <sup>st</sup> Party SNT
How much can be funded in a year?	\$19,000 (or annual gift exemption)	Unlimited	Unlimited
Is funding gift tax-free?	Yes	No	No
Is there a cap on how much can be in an account?	Yes, currently \$100,000 limitation for SSI recipients and up to state 529 plan limits for Medicaid only recipients (\$529,000 in CA)	No	No
How is income taxed?	No income tax	Tax as non-grantor trust as highest marginal tax rate	Tax as a grantor trust at beneficiary's rate
What type of distributions can be made?	Qualified disability expenses	No limitation except for certain disbursements may reduce for eliminate SSI or Medicaid eligibility	Primary Benefit of beneficiary

# ABOUT COOKMAN LAW

- Palo Alto law firm serving all of California
- 3 attorneys, 10 support staff
- We charge a flat fee for estate planning, special needs planning and trust administration
- We do not assist with applications for public benefits
- Now launching our Trust Maintenance Program!





THANK YOU  
FOR YOUR  
ATTENTION!

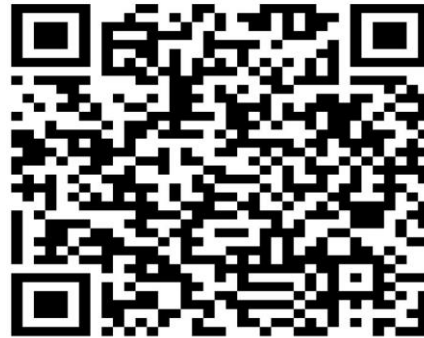
650-690-2571

[info@cookmanlaw.com](mailto:info@cookmanlaw.com)

[www.cookmanlaw.com](http://www.cookmanlaw.com)

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Ellen Cookman -  
Special Needs Trust  
Attorney



@PaloAltoEstate  
Planner



Ellen Cookman,  
JD, LL.M



Cookman\_Law