

PRESENTED AT

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How I Learned to Stop Worrying and Love the ABLE Act

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How I Learned to Stop Worrying and Love the ABLE Act

ABLE Accounts are available at long last – and this session will explore how and why to educate your community about the ABLE Act as well as all options to save for a person with a disability. This session will also demonstrate how tying an ABLE Account with a Pooled Trust Account can be a useful combination to get the best of both worlds as well as an opportunity to be directly involved in development of education and policy in your state.

Background

The ABLE Act was passed in December of 2014, and Ohio was the first state to open their ABLE program in 2016.¹ As of this writing, there are 4 programs opened in Ohio, Nebraska, Tennessee and Florida. The Ohio, Nebraska, and Tennessee programs are open to anyone in any state, while the Florida program is exclusively for Floridians. While it is expected that many more states will enact their own programs in the coming years, ABLE Act programs are available now and even in states like my home state of California where our program is expected to go online sometime this summer, there is no reason to wait to educate our communities. This is partially true because so far the existing programs will allow a transfer of an ABLE Act account to another states program with little or no problem.

The ABLE Act first was introduced in 2007. The initial bill and the disability programs that initiated the bill originally were very critical of special needs trusts and attorneys and advisors in the special needs trust industry. In fact, many of the early promotions of the ABLE Act villainized the special needs trust attorney and the special needs trust industry, and omitted key features of the legislation not the least of which is not mentioning the lien. My first interest in the ABLE Act quite frankly, was in reaction to these early promotions of this legislation and what I perceived as inaccurate information used to promote passage. In 2012, I wrote an article for the NAELA Special Needs Law Section Newsletter, Spring 2012 and a

¹ For a webinar on Ohio's ABLE Program, go to <https://www.youtube.com/watch?v=nXiNxdIwaTM&index=10&list=PL5dEwICC642pAR-KnAMN19Pa-Jda56Npk>

call to build bridges between the special needs trust community and the disability community.²

Oddly enough, the final legislation as passed and modified in 2015 create a tool that can work very nicely with special needs trusts and presents the special needs trust practitioner and pooled trust administrator with a real opportunity to use the ABLE Act as a platform to educate their communities about the need for funding to assist a person with a disability to provide for services. In addition, this is a great opportunity to form meaningful coalitions between all stakeholders that focus on the need for sustainable resources for persons with disabilities and their families to build bridges rather than maintain walls of isolation. Implementation at the state level provides stakeholders and advocates a platform not only to educate our communities about this tool, but to focus on a broader need of examining all options as well as the need for systemic change in our social service and judicial systems. This is why I have learned to stop worrying and love the ABLE Act.

"The First Thing We Do, Let's Kill All the Lawyers,"

There has been a growing trend across this nation of villainizing the private legal bar that is dedicated to protecting the rights of persons with disabilities. The greatest example of this is law offices that focus on enforcing the access laws under the Americans with Disabilities Act. In California when the disability access laws were drafted, advocates realized that if enforcement were left up to the Attorney General that business interests would prevent any meaningful activities. California's law created a private right of action in the private bar and was encouraged to act as "private attorney generals". Because of this, countless facilities open to the public have been made assessable to allow persons with disabilities to enjoy access to these facilities. Unfortunately, the business community has been very successful in painting these lawyers as vexes litigators for doing exactly what the law encouraged them to do. Sadly, very few organizations including disability advocacy groups came to support the ADA Access Attorney. The fact is, as with any civil rights community including persons with disabilities, it is imperative to have a knowledgeable and ethical body of lawyers to enforce the rights of persons with disabilities, otherwise laws like the ADA become meaningless.

² See

https://www.naela.org/Public/Section_Newsletters/Special_Needs_Law/Spring2012/Bridging_the_Great_Divide_A_Request_to_Revise_the_ABLE_Act.aspx

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