

Demystifying Special Needs Trusts



Hinkle Prior Fischer & Oberweis
Attorneys at Law

Representing people with disabilities and their families since 1974

Not All Trusts Are Special Needs Trusts



- Many Kinds of Trusts for Different Purposes
 - Reduce estate taxes
 - Preserve family wealth
 - Transfer or hold real estate
 - Spendthrift trusts
 - Protect minor children & young adults
 - Protect in the event of a divorce
 - Protect in the event of a re-marriage
 - Nursing home & elder planning
- Almost all of these trusts will jeopardize Government Benefits

All Trust Have Three Main Actors

Settlor or
Grantor

Beneficiary

Trustee

Special Needs Trusts

Funds are not counted as a resource for purposes of benefits

No limitation on the amount which can be deposited at one time

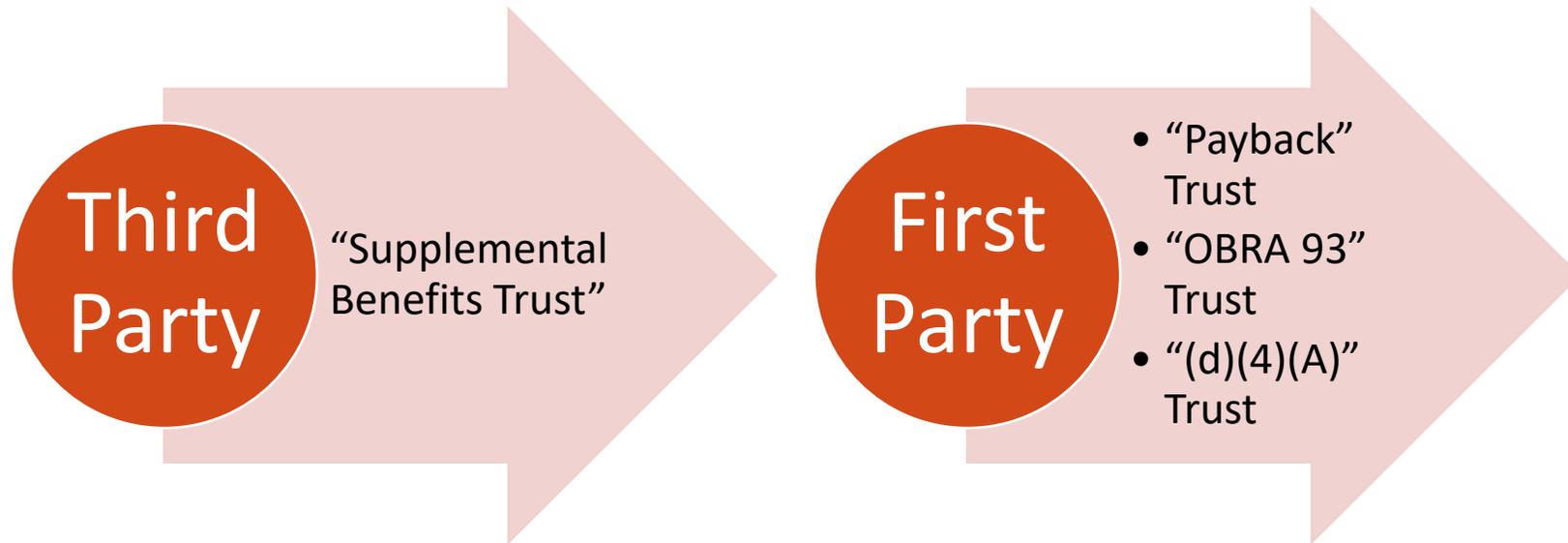
Funds can only be used for the beneficiary

Funds cannot be used for food, clothing and shelter (Medicaid)

Funds cannot be used for shelter (SSI)

Funds can be used for therapies, trips, recreation, supports, transportation, or almost anything else not covered by the government

Two Types of Special Needs Trusts



Third Party Trust

Holds funds belonging to someone other than the individual with the disability

There is no payback requirement

At the end of the beneficiary's life, the leftover funds are distributed to wherever the parents decide

Less regulatory oversight

Usually part of a comprehensive estate plan

Accepting the Inevitable

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www.glasber.com



**“The day after I died, the sun came up as usual
and the world went on without me.
I wasn’t expecting that!”**



Estate Planning for Families with Special Needs

- A comprehensive estate plan will include the following documents:
 - Will
 - Durable Power of Attorney
 - Living Will
 - Special Needs Trust
- In some cases additional documents will be recommended to minimize estate taxes liability

Third Party Special Needs Trusts Are Usually Funded Through

- Will / Estate Plan
- Life Insurance
- 401(K)
- Gifts from Parents
- Gifts from others
- Bequests from others

FUNDING

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Three “Methods” of Estate Planning

Do Nothing

Give it all to
the Other
Kids

Special Needs
Trust

What do Parents Need to Do?

(Preparing for When I'm gone)

Name successor guardian in Will

Name successor trustee in Special Needs Trust

Consider appointing co-guardian during parents' lifetime

Consider co-fiduciaries versus successor-fiduciaries

Do you want the guardian and trustee to be the same or different people?

Is a corporate fiduciary right for your circumstances?

Picking the “Right” Successor

- **Factors to Consider:**
 - **Age**
 - **Emotional Readiness**
 - **Life’s circumstances**
 - **Involvement**
 - **Diligence**
 - **Strength of personality**
 - **Willingness to ask for help**

Good Qualities for Successor

- **Compassion and Patience**
- **Willingness**
- **Able to get along with others**
- **Responsiveness**
- **Reasonably good a record keeping**
- **Gets stuff done (“GSD”)**
- **Willingness to ask for help**
- **Get involved**

Naming a Successor or Co-Trustee



Typically no need
for court
involvement



Nominate in Will or
Trust Agreement



Age and Wisdom an
important Factor



Usefulness of a
corporate /
institutional trustee



Appointment of a
Trust Protector

Picking the “Right” Successor



CartoonStock.com

What if I have no one?



Corporate Fiduciary / Community
Trust Organization



PLAN – New Jersey

What if I Have More than One?



"ALTHOUGH THE ESTATE WILL BE DISTRIBUTED EQUALLY, YOUR FATHER WANTED YOU ALL TO KNOW THAT KEITH WAS HIS FAVORITE, FOLLOWED BY..."

CartoonStock.com

First Party Trust

Holds funds belonging to the individual with a disability

At the death of person with a disability, the funds must first satisfy any Medicaid lien

- DDD can get in on the action too

New Jersey regulations require, among other things:

- Annual accountings
- 45 day notice prior to any expenditure greater than \$5,000

More Regulatory Oversight

First Party Trusts Are Usually Funded Through



- Lawsuit / Personal Injury Settlement
- Improperly Received Inheritance
- Accumulated resources before anyone knew of a need for the trust
- **This type of trust often requires Court approval**

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Spending The Money

- Must be for the person with a disability
- Cannot jeopardize Government Assistance Benefits
- Cannot be for housing
- Generally can spend money on anything needed or wanted as long as it's not provided or available from the government or insurance



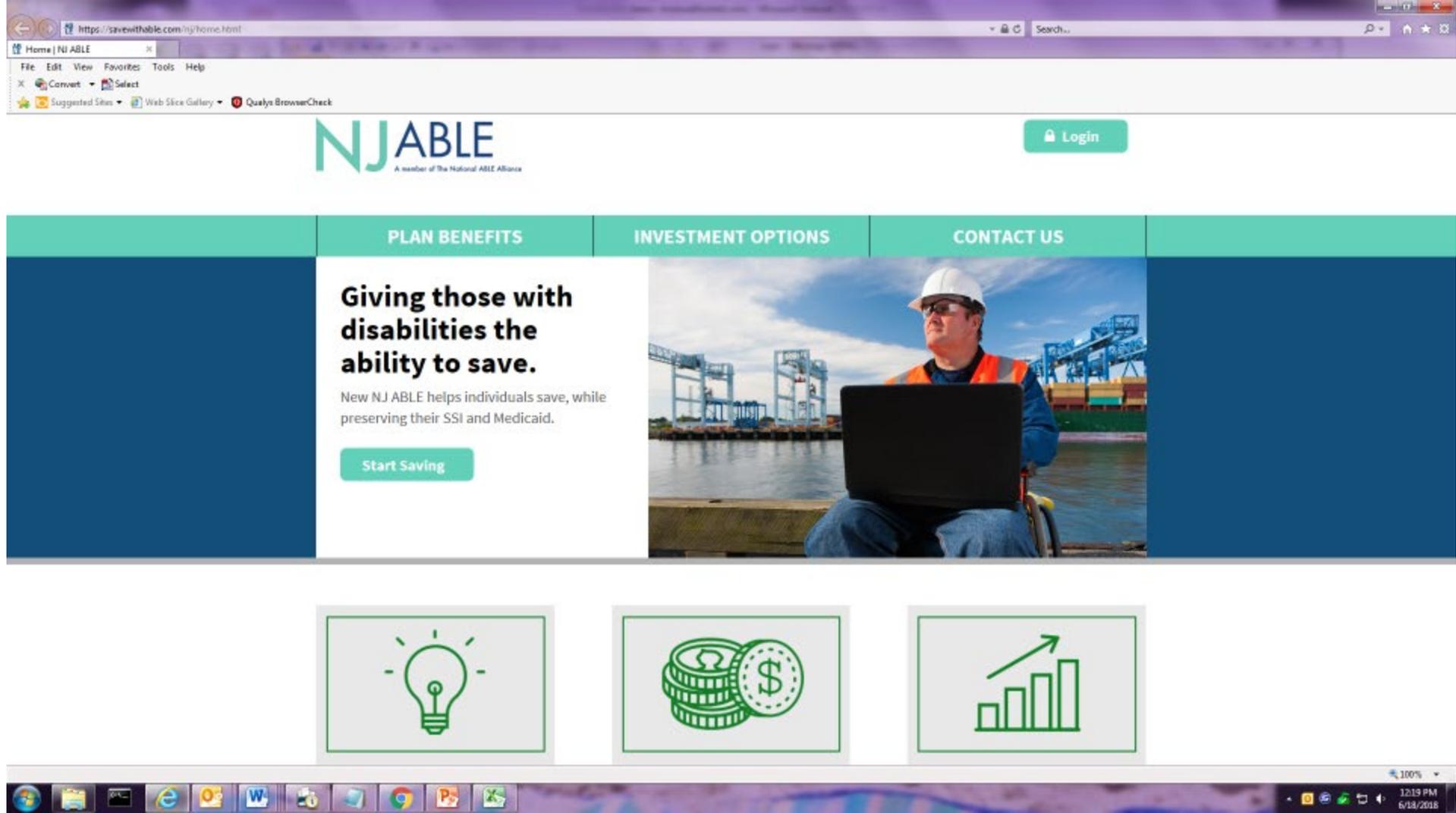
First Party Trust v. Third Party Trust

First Party

- Money Comes from the Person with a Disability
- Government Payback Requirements
- Regular Accountings to Medicaid
- Notice Requirement on Disbursements over \$5000
- More Government Oversight

Third Party

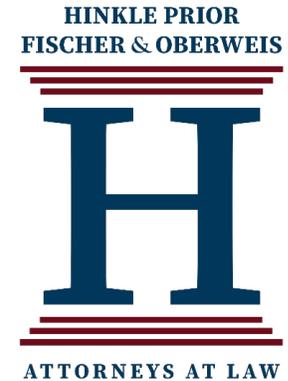
- Money Comes from someone OTHER than the Person with a Disability
- No Government Payback
- Less formal or no accounting requirements (unless on a redetermination)
- No Notice requirements on Disbursements
- Less Government Oversight



<https://savewithable.com/nj/home.html>

Recent Changes to ABLÉ Act

- Annual Contribution Limit Remains at \$19,000 / year
- Previously onset must be before age 26
- As of January 1, 2026, age of onset must be before 46.
- ABLE-to-Work is now permanent:
 - Those who work can contribute up to \$15,060
 - Does not apply if you have contributions to qualified retirement plan



What Can Funds In An ABLE Account Be Used For?

- Qualified expenses including:
 - Housing
 - Education
 - Transportation
 - health aides
 - employment supports
 - therapies and similar expenses

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Benefits of ABLE Accounts

Funds saved in an ABLE account do NOT affect Medicaid eligibility

Funds saved in an ABLE account up to \$100,000 will NOT affect SSI eligibility

Funds in an ABLE account used for housing do NOT affect Medicaid eligibility

However need to be careful about the timing of housing expenses so as not to accidentally affect SSI eligibility

Can be counted as resource

Limitations of ABLE Accounts



- Maximum annual deposit into an ABLE Account is \$19,000 (in 2025)
- If Balance of Account Exceeds \$100,000 SSI benefits are suspended.
- Funds remaining in the account at the death of the individual with a disability must be used to repay government liens
 - If the individual was receiving Medicaid benefits there likely is an outstanding government lien

ABLE Account v. Special Needs Trusts

- What is the difference between an ABLE account and a third party special needs trust?
 - Funds in a third party special needs trust are not subject to government liens
 - Funds in a third party special needs trust are never considered a resource for Medicaid or SSI eligibility
 - ABLE account funds can affect SSI benefits





Does the way the funds are used make a difference?

- Funds spent from an ABLE account for housing do not affect Medicaid eligibility
 - Funds spent from an ABLE account for housing can affect SSI eligibility if families are not aware of timing issues- distributions for housing are “counted” if not spent in the month of the distribution
 - “Housing Expenses” includes mortgage, property taxes, rent, heating fuel, gas, electric, water, sewer, and garbage removal

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ABLE Account Administration

- States are required to report first-of-the-month account balances to the Social Security Administration
- States are required to report all distributions
- Person with Signature Authority must maintain records

Questions?

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