South Carolina Bar
Continuing Legal Education Division

2026 SC BAR CONVENTION

Elder Law Committee

"Trust Issues Arising in Estate Planning and Special Needs/Medicaid Planing"

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South Carolina Bar
Continuing Legal Education Division

Special Needs Trusts-First Party and Third Party

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SPECIAL NEEDS TRUSTS – FIRST PARTY AND THIRD PARTY TRUSTS FOR PEOPLE WITH DISABILITIES

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TODAY'S TOPICS

- Context, please?
- Third Party Trusts – Someone else's funds
- First Party Trusts – The person on Medicaid/SSI's funds

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CONTEXT PLEASE

- There are 2 types of Government Benefits:
  - **Earned benefits** – examples include:
    - Medicare
    - Social Security Payments
  - **Needs-based benefits** – examples include:
    - Medicaid
    - Supplemental Security Income (SSI)
    - SNAP
    - Housing benefits

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CONTEXT PLEASE

- Needs Based Benefits have Income and/or Resource Limits
- If an individual has funds, then we need a plan to reduce or eliminate the impact of the funds on benefits
- If a family member wants the individual on public benefits to receive funds at their death or during life, those funds, if given directly, will impact benefits – this can be avoided with a third party trust

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CONTEXT PLEASE

- Not all income or resources count toward the limits
- Examples:
  - Income placed into a valid Special Needs Trust the month it is received does NOT count as income for that month – if the beneficiary is under age 65
  - Resources placed into an ABLE account do not count toward the $2,000 resource limit
  - Funds in a Third Party Trust do not count toward the resource limit

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CONTEXT PLEASE

- When are these tools used?
  - When an individual wants to qualify for benefits but has excess income and/or resources to qualify
  - When an individual who is already on benefits becomes entitled to new resources or wants a way to save money or shelter income
- Got a full-time job but on a Medicaid Waiver?
- Inherited from a rich uncle?
- Injured in a car crash and getting a settlement?
- Need to apply for Medicaid because of an injury?

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THIRD PARTY TRUSTS

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THIRD PARTY

- Funds come from a source that is NOT the person on Medicaid or SSI
- Typically called a "Supplemental Needs Trust" – but may also be called a "Special Needs Trust"
- Can be part of a Will – A Testamentary Trust - or a Stand Alone Trust

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THIRD PARTY

- Supplemental and **Discretionary**
- No mandatory distributions at ages or of income
- The Trust should say what happens to the funds at the death of the beneficiary

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THIRD PARTY

Important Considerations:

- Stand Alone or Testamentary?
- Who will be the Trustee? What happens if that person can no longer be the Trustee?
  - Trustee succession
- Will the Trust own real estate?
- What happens to remaining funds at the death of the beneficiary?
- Should the Trust funds be used for a spouse or children of the primary beneficiary?
- Revocable/Irrevocable?
- Tax/Medicaid planning for the Settlor?

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FIRST PARTY TRUSTS

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WHAT IS A FIRST PARTY SPECIAL NEEDS TRUST?

Unlike Third Party Trusts, Special Needs Trusts are authorized by and must comply with federal statute:

42 U.S.C. § 1396p(d)(4)(A)

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REQUIREMENTS 1,2, AND 3

"A trust containing the ***assets of an individual under age 65 who is disabled.***"

- First party trust
- Individual must be UNDER AGE 65!
- Individual has a disability determination from the Social Security Administration (what if a child and uncertain???)

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REQUIREMENT 4

"***established*** for the benefit of such individual"

- The trust can only benefit the beneficiary (not a spouse and not a child of the beneficiary)
- If there is some collateral benefit that is permissible (For example, trust pays for Internet but other people in the household use the same Internet)

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REQUIREMENT 5 OUT OF 6

"by the individual, a parent, grandparent, legal guardian of the individual, or a court"

- A Trust created by Uncle Joe will not work and the assets in it will count for purposes of needs-based benefits.
- An individual does not have to be able to read or see or hear to establish a SNT. They need to understand what they are signing or having signed for them. They do NOT need to understand every word.

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REQUIREMENT 6 OUT OF 6

"if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter"

- There is a catch – it is a "pay back" trust
- Not only can family not benefit during the lifetime of the individual, but they may not benefit after the individual has died

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MORE CONSIDERATIONS

- A SNT is not always the right tool
- Discuss with your client the other options (spend down, ABLE account, Pooled Trust)
- Trustee selection is key - There are reporting requirements
- DHHS does track the funds in these trusts and will seek payment from them

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REMINDER!

- A parent/grandparent may have authority to create the subaccount or First Party Special Needs Trust, but do they have authority to fund it?
- The individual must authorize the funding of the subaccount/Trust, or for a minor or individual who does not have the capacity to authorize the funding, the Probate Court

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WHICH TOOL IS THE RIGHT TOOL?

- Third Party/First Party?
- Age of the beneficiary?
- When did the beneficiary become disabled?
- Who can serve as Trustee?
- How much money is involved?
- Do we need to shelter income or resources or both?
- How will the spouse and children be supported?

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ANY QUESTIONS?

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Probate Court Proceeding and Trusts

Andrew Atkins

No Materials Available

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SECURE Act

Mitchel Payne

The SECURE ACT
And
SECURE ACT 2

Planning for Long-Term Care, Disabilities, and Special Needs

And Retirement Benefits

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What is the Secure Act and Secure Act 2?

- The Setting Every Community Up for Retirement Enhancement (SECURE) Act was passed in December 2019 and became a law as of Jan. 1, 2020.
- The SECURE Act changed a variety of retirement account (IRAs, 401Ks, 403bs, and others) rules, including who is eligible to contribute to retirement accounts, how much can be contributed, and when withdrawals are required.
- The Act also provided additional exceptions to the early withdrawal penalty.
- On December 22, 2022, Congress passed the Secure 2 Act of 2022. This act made further changes to rules regulating contributions to and withdrawals from retirement plans, as well as how these plans are administered.

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What is the Secure Act and Secure Act 2 continued?

- In July of 2024, the Internal Revenue Service issued final regulations concerning the distribution rules under the SECURE Act and the SECURE 2.0 Act.
- The regulations were effective September 19, 2024, but generally apply to required minimum distributions (“RMDs”) for calendar years beginning on or after January 1, 2025.
- The regulations deal with the time that an employee with a qualified plan account or owner of an IRA must begin taking distributions from the qualified plan or IRA (the "required beginning date" rules) and the pace at which benefits must be taken (the “required minimum distribution” rules).
- The final regulations and preamble cover 260 pages.

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Core Retirement Account Changes from the SECURE ACT 1

- The required beginning date for required minimum distribution (RMD) increased to 72, up from 70 1/2.
- The age limit for IRA contributions was removed.
- Inherited retirement account distributions must generally be taken within 10 years.
- New parents can take penalty-free withdrawals.
- Long-term part-time employees may now be eligible for 401(k) plans.

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Key Provisions of Secure 2 Act of 2022

- Effective for plan years beginning after December 31, 2024, new 401(k) and 403(b) plans must automatically enroll employees when eligible. Automatic deferrals start at between 3% and 10% of compensation, increasing by 1% each year, to a maximum of at least 10%, but no more than 15% of compensation.
- SECURE 1.0 provided for an increase in the retirement plan contribution limit for persons over 50 (“catch-up contributions”).
- SECURE 2.0 provided a second increase in the contribution amount for those aged 60, 61, 62, or 63, effective for tax years after 2024.

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Key Provisions of Secure 2 Act of 2022

- Penalty-free distributions are allowed for “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses” up to $1,000. Only one distribution may be made every three years or one per year if the distribution is repaid within three years. Penalty-free withdrawals are also allowed for small amounts for individuals who need the funds in cases of domestic abuse or terminal illness.
- Employer matching of student loan repayments is allowed. Effective for plan years beginning after December 31, 2023, employers can match student loan repayments as if the student loan repayments were deferrals.
- Automatic rollover rules change.
  - Currently, plans may automatically distribute small accounts of less than $5,000 to former participants. If the distribution is greater than $1,000, the plan must roll the account into an IRA.

    Effective 12 months from enactment, SECURE 2.0 permits the transfer of default IRAs into the participant’s new employer’s plan, unless the participant affirmatively elects otherwise. SECURE 2.0 also increases the limit for automatic rollovers from $5,000 to $7,000.
- Long-term, part-time workers qualify more easily.

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Key Provisions of Secure 2 Act of 2022

- Emergency savings account deferrals allowed.
- The annual limit on contributions to individual retirement accounts (IRAs) is also increased for participants aged 50 and older. The "catch-up" limit for IRAs is $1,000. Unlike the catch-up amount for other plans, this amount is not subject to increases for inflation under current law. SECURE 2 adjusts the IRA catch-up amount annually for inflation, effective for tax years beginning after 2023.
- Penalty-free emergency withdrawals are allowed under certain circumstances.
- A database to locate missing participants and funds was created.
- SECURE 2 made further changes to the required beginning date for required minimum distributions for IRA owners and plan participants. See next page.

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WHAT THIS SEMINAR WILL COVER

The Secure Act and Secure Act 2 have broad-ranging effects on the management and implementation of retirement plans by employers. However, for this seminar, we will focus on planning for individuals who need long-term care or have disabilities and special needs. Therefore, our focus will be on how these acts affect withdrawals from Retirement plans, for both the owner of the IRA or participant in the retirement plan and the beneficiary of a retirement plan or IRA after the death of an owner.

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Important terminology

- Applicable distribution period (ADP) = the time period in which distributions must be withdrawn from the account
  - The optimal situation would be to use the beneficiary's life expectancy as the ADP
- Required minimum distributions (RMDs)= the amount that must be withdrawn on an annual basis from the retirement account
  - More can be withdrawn, the RMD is the floor for withdrawals
- Stretch = the ability to withdraw RMDs over the life expectancy of an individual
  - The ADP is the life expectancy of the individual
  - Allows funds to continue to grow in the account, tax-deferred

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More Important terminology

- Retirement Fund Beneficiary = a person or entity designated by the owner of an IRA or participant in a retirement plan to receive distributions following the death of the owner or participant.
- Designated Beneficiary = a retirement fund beneficiary who is a living person. In other words, not an entity. For example, an estate, a charity, a Trust (except Designated Beneficiary Trusts discussed later), an LLC, a corporation, a partnership, etc., cannot be Designated Beneficiaries.
- Eligible Designated Beneficiary = A Designated Beneficiary who has certain attributes that afford him or her more liberal treatment under the Required Minimum Distributions rules. We will cover those attributes shortly.
- Non-Designated Beneficiary = Not an official term, but this is any beneficiary who is not a Designated Beneficiary.

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More Important terminology

- Designated Beneficiary Trust = a Trust which is the beneficiary of a retirement plan or IRA, and ALL of the **countable** beneficiaries of the Trust are Designated Beneficiaries.
- Funding Trust = Trust that will receive retirement benefits on the death of the owner of the IRA or plan participant and will distribute those benefits to individuals or sub-trusts.
- See-Through Trust = A trust that is the beneficiary of a retirement plan or IRA, and which meets the requirements under the Treas. Regulations to be a See-Through Trust. The beneficiaries of a See-Through Trust may be treated as the beneficiaries of the plan or IRA for purposes of RMDs. **Note that a Designated Beneficiary Trust must be a see-through trust, but a see-through trust is not necessarily a Designated Beneficiary Trust.**

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More Important terminology

- Conduit Trust = A See-Through Trust that requires all distributions received from a retirement account to be immediately distributed to or for the benefit of one or more specified individual trust beneficiaries.
- Accumulation Trust = A See-Through Trust that is not a Conduit Trust. This Trust can retain retirement plan distributions.
- Countable Beneficiary = is any beneficiary of a Trust that must be counted in determining whether the Trust qualifies as a Designated Beneficiary Trust.
- Required Beginning Date - The date at which the owner of an IRA or plan participant must begin taking Required Minimum Distributions.

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What is a "See-Through Trust?

- A See-Through Trust, is a Retirement Fund Beneficiary that meets the following Criteria. If it fails to meet one of these criteria, it is not a See-Through Trust and cannot be a Designated Beneficiary Trust:
  - The Trust must be valid under state law.
  - The Trust must be irrevocable or, by its terms, become irrevocable upon the death of the IRA Owner or Plan Participant.
  - The beneficiaries of the trust who are beneficiaries with respect to the Trust's interest in the IRA or Retirement plan must be identifiable from the terms of the Trust (not by operation of law or contract.)
  - A copy of the trust(or an eligible summary of its terms) must be provided to the plan administrator or custodian of the IRA by October 31 of the year following the death of the owner or participant.

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What is required to be a Designated Beneficiary?

- A Designated Beneficiary is a Beneficiary with all of the following attributes:
  - The Beneficiary must be a living person. This is referred to by some commentators as the heartbeat rule. This is because the beneficiary must have an ascertainable life expectancy under IRS Regulations.
  - The Beneficiary must be identifiable from the provisions of the Trust
    - General designations will work in some cases (*e.g*., "my then living children")
    - But "the fact that an employee's interest . . . passes to a certain person under the plan under a will or otherwise under applicable State law does not make that person a beneficiary designated under the plan."
    - Must be identified by September 30 of the year following the year of death of the employee/owner

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What is required to be an Eligible Designated Beneficiary?

- An Eligible Designated Beneficiary is any Designated Beneficiary with **one or more** of the following attributes:
  - Is the spouse of the deceased owner or plan participant.
  - Is the minor child (Under age 21) of the owner or plan participant, including adoptive children, stepchildren, and eligible foster children (*see* IRC § 152(f)(1))
  - Is disabled - an individual is considered disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. This is the same rule for SS Disability.
  - Is chronically ill
  - Is less than ten years younger than the owner or plan participant

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What is required to be an Eligible Designated Beneficiary?

- "chronically ill individual" means any individual who has been certified by a licensed health care practitioner as—
  - (i)being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,
  - (ii)having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or
  - (iii)requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

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What is required to be an Eligible Designated Beneficiary?

Comparison Disabled vs. Chronically Ill

Feature	**Disabled Beneficiary**	**Chronically Ill Beneficiary**
Primary Test	Unable to engage in "substantial gainful activity" (SGA).	Unable to perform 2 of 6 "activities of daily living" (eating, bathing, etc.).
Alternate Test	For minors: "marked and severe functional limitations".	Needs substantial supervision due to severe cognitive impairment.
Duration	Must be indefinite and expected to result in death or be long-continued	Must be for an indefinite period, reasonably expected to be lengthy.
Documentation	Must provide proof of disability to the plan administrator by Oct. 31 of the year after death.	Must provide certification from a licensed health care provider.

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How did the SECURE Act affect Distributions from Retirement Plans and IRAs

- Before the SECURE Act, an individual beneficiary of an inherited IRA or retirement plan was required to take RMDs over their remaining lifetime based on their age at the death of the IRA owner or Plan Participant. This was called the Stretch and allowed young beneficiaries to withdraw from the plans over a very long period of time. RMDs began in the year following the death of the IRA Owner or Plan Participant.
- After SECURE, only **Eligible Designated Beneficiaries** can qualify to stretch distributions.

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Understanding Required Minimum Distributions After SECURE

- At a certain point, each participant in a retirement plan and each owner of an IRA (except Roth IRAs) must begin withdrawing funds from his plan or IRA and paying the tax on those distributions. The date at which that must begin is the RBD or Required Beginning Date. Before SECURE, that was for most people April 11 of the year following age 70½. Under the Secure Act and Secure Act 2, the RBD for owners and participants was changed to allow funds to be held longer. See the next page for new RBDs.
- Once a participant or owner reaches the RBD, he or she must make annual withdrawals over the Applicable Distribution Period (After Secure the Applicable Denominator).

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Changes to the Required Beginning Date for RMD By Secure Act & Secure Act 2

Effective for individuals attaining	**RMD age**	
Age 70 ½ before 1/1/2020	70 ½	Prior to the SECURE Act*
Age 70 ½ after 12/31/2019 and age 72 before 1/1/2023	72	Change with the SECURE Act*
Age 72 after 12/31/2022 and age 73 before 1/1/2033	73	Change with SECURE 2.0
Age 73 after 12/31/2032	75	Change with SECURE 2.0

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Understanding Required Minimum Distributions, Cont.

- For owners or participants, the RMD rules remain largely the same before and after SECURE (except the RBD). The annual RMD is determined by a formula that requires the participant or owner to withdraw funds from their deferred retirement accounts over their life expectancy, determined under tables maintained by the IRS.
- The RMD is simpler for a single person than it is for a married person, as a married person is allowed to use a joint life table. Each year, the applicable RMD factor for the owner is applied to funds in the accounts at the beginning of the year, and the owner or participant must withdraw that amount during the year.
- There are severe penalties for failure to withdraw the required amount.
- There are no required distributions from Roth IRAs by **owners or participants**. Not so for retirement fund beneficiaries.

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Understanding Required Minimum Distributions, Cont.

- Under the SECURE Act and Secure Act 2 the RMD rules for retirement fund beneficiaries changed dramatically.
- Now the RMD rules depend on several factors, including:
  - The type of Beneficiary
  - The age of the Beneficiary
  - The relationship of the Beneficiary to the deceased owner or participant.
  - The age of the owner or participant at the time of his death.
  - The health condition of the Beneficiary.

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THE BASIC RMD PAYOUT RULES

- Before we begin a discussion of RMDs for each retirement fund beneficiary, we must understand the three basic RMD rules: the five-year rule, the ten-year rule, and the "Stretch Rule." We must also understand a fourth rule, referred to by some commentators as the "Ghost Rule." We can then go through when these rules apply to each Retirement Fund Beneficiary.
- Note these rules do not apply to beneficiaries if the owner or participant died before January 1, 2020. The old rules apply.

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The Ten-Year Rule

- The Ten-year rule requires that a retirement fund beneficiary withdraw all of the funds from the inherited IRA or Retirement Plan by the end of the year that contains the tenth anniversary of the death of the owner or plan participant.
- If the IRA owner or Plan Participant died after his RBD, the beneficiary must continue to take annual RMD based on the life expectancy of the deceased owner or participant, and any remaining funds must be withdrawn in the 10th year.
- If the owner or Plan Participant died before his RBD, the beneficiary must take annual RMDs based on the beneficiary's age (as with the stretch), and any remaining funds must be withdrawn in the tenth year.
- These rules affect Trusts differently.

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The Five-Year Rule

- The Five-year rule requires that a retirement fund beneficiary withdraw all of the funds from the inherited IRA or Retirement Plan on or before the end of the calendar year that includes the 5^{th} anniversary of the owner or participant's death.
- If the IRA owner or Plan Participant died after his RBD, the beneficiary must continue to take annual RMD based on the life expectancy of the deceased owner or participant, and any remaining funds must be withdrawn in the 5^{th} year.
- If the IRA owner or Plan Participant died before his RBD, the beneficiary can withdraw the funds at any time or in any amount so long as they are withdrawn by the end of the fifth year.
- The Five-year rule generally applies to all Non-Designated Beneficiaries.

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The Stretch or Life Expectancy Rule

- If the Stretch or Life Expectancy Rule applies to a beneficiary, the beneficiary will generally be required to withdraw the inherited retirement funds in the same manner as before the SECURE Act. The RMD calculation is based on the life expectancy of the Beneficiary and determined using tables maintained by the IRS. The RMD divisor or denominator is applied to the year-end balance of the Retirement funds for the prior year, and that sets the RMD for the current year.
- If the beneficiary dies before the funds are distributed, the successor beneficiary must generally continue the distributions on the same schedule as the original beneficiary but must pay out all funds within 10 years of the beneficiary's death.
- The Stretch or Life expectancy rule is only available to **Eligible Designated Beneficiaries**, and there are differences in the application for each type of EDB.

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The Ghost Rule or Ghose Life Expectancy

- The so-called Ghost Rule or Ghost Life Expectancy rule comes into play when the owner or plan participant dies after his RBD. In other words, after he or she has begun taking RMDs.
- The rule is based on a section of the Code that is outside of the SECURE Act, but required beneficiaries of inherited retirement plans to continue to take the distributions at least as rapidly as the owner or plan participant would have withdrawn the funds.
- This requires that each year the RMD be calculated as if the deceased owner were still alive, and that amount must be withdrawn.
- This rule is imposed in addition to the five-year or ten-year rule, which generally results in a more rapid pullout of the funds.

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Application of the Rules

- The Ten-Year Rule, as modified by the Ghost Rule, applies to Designated Beneficiaries who are not Eligible Designated Beneficiaries.
- The Five-Year Rule as modified by the Ghost Rule applies to non-designated beneficiaries.
- The Stretch or Life Expectancy Rule applies to Eligible Designated Beneficiaries (Not affected by Ghost Rule, but after the death of the EDB, funds must continue to be withdrawn based on the ghost life expectancy of the EDB, with complete withdrawal within 10 years of the EDB’s death).

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SPECIAL RULES APPLICABLE TO SPOUSE

- *Spouse* - Requires proof of marital relationship.
  - If the Spouse is the beneficiary, he or she can choose to "roll" the retirement funds into a rollover IRA. In that event, the IRA will be treated as if it were his or her IRA from the beginning. I.E., no required withdrawal until his or her RBD, and then stretch or life expectancy RMDs after RBD, based on beneficiary life expectancy.
  - Alternatively, the Spouse can choose to elect inherited IRA status. In which event, the stretch rule based on the life expectancy of the spouse applies, with RMD pullouts beginning in the year following the owner or plan participant's date of death. For this option, the Spouse is the only EDB whose life expectancy is recalculated every year. Others use life expectancy at RBD, and that is reduced by one each year thereafter.
  - SECURE 2.0 introduced a third option. A surviving spouse can elect to treat the account or IRA as his or her own for purposes of the distribution rules, but elect to have the RMDs computed based upon the life expectancy of the deceased owner or plan participant.

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SPECIAL RULES APPLICABLE TO MINOR CHILDREN

- Minor Child
  - Requires a parent-child relationship with the account holder.
    - Biological Child
    - Legally Adopted Child
    - Stepchild
    - Eligible foster child (*see* IRC § 152(f)(1))
  - A minor child gets to use the stretch rule based on the child's life expectancy until age 21, then must withdraw under the ten-year rule as he or she is no longer an EDB.
  - A minor child who is also **disabled or chronically ill** will continue to be treated as an EDB after reaching the age of majority if the documentation requirements are timely met with respect to the beneficiary.

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RULES APPLICABLE TO DISABLED OR CRONICALLY ILL INDIVIDUALS

Disabled and chronically ill beneficiaries are EDBs and are eligible to use the Stretch or life expectancy RMD rules. The life expectancy used to calculate annual RMDs is generally the **longer** of the beneficiary's life expectancy or the deceased owner's remaining "ghost" life expectancy.

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Applying the Rules to Trusts

- In estate and long-term care planning, it is frequently not possible or reasonable to make individuals the beneficiary of retirement funds.
- Perhaps the beneficiary is a spendthrift and will lose the funds, or is disabled and will lose public benefits, or is in debt and will lose the funds to creditors.
- In these situations, a Trust is frequently the answer, but how does that affect the RMD rules?
- First, a Trust is not a designated beneficiary unless it qualifies as a designated beneficiary trust.

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Applying the Rules to Trusts, Designated Beneficiary Trusts

- As discussed earlier, a Designated Beneficiary Trust is a “See-Through Trust, of which all the **countable** trust beneficiaries are designated beneficiaries.
- To analyze the Trust, we must first apply the “See Through Trust Rules”, and if the trust passes those rules, we must determine if all of the beneficiaries are designated beneficiaries.
- If the Trust is a Designated Beneficiary Trust, we can look through to the primary beneficiary of the Trust to apply the applicable rules.
- If trust fails the See Through Trust Rules or the Trust has a countable beneficiary that is not a designated beneficiary, the trust is not a Designated Beneficiary Trust, and the five-year rule applies to the Trust.

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Applying the Rules to Trusts, Cont. Which Trust are we Testing, and Which Beneficiaries Count

- With certain exceptions discussed below, the Trust we are testing is the trust designated as the beneficiary of the Retirement Funds, even if that is divided into separate sub-trusts.
- For example. If John Doe names the John Doe Revocable Trust as the beneficiary of his retirement plan, that trust will be tested. If John Doe names the three sub-trusts for his children created by his Revocable Trust as individual beneficiaries, each of those Trusts will be tested. Each tested trust must comply with the “See Through Trust Rules”, and all beneficiaries must be designated beneficiaries.
- Thus, if a revocable trust divides into shares on the death of the grantor and some of those shares go to DBs and some go to EDBs, the Trust will use the 10 Year Rule for all the beneficiaries.
- If a revocable trust divides into shares on the death of the grantor, and some of those shares go to charity the trust is not a Designated Beneficiary Trust and the 5-year rule may apply.
- **Exception to follow**.

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Applying the Rules to Trusts, Cont.

- EXCEPTION 1: When the IRS released its Final RMD Regulations in July of 2024, it introduced a significant new carve-out to the 'single distribution schedule' rule. Under the new rules, if a see-through trust is split into separate sub-trusts immediately following the account owner's death, each sub-trust can use its own distribution schedule. In other words, under the old rules, a trust with a mix of Eligible and Non-Eligible Designated Beneficiaries would have been automatically subject to the 10-Year Rule for Non-Eligible Designated Beneficiaries. Under the new rule, if the trust is divided into separate sub-trusts for each beneficiary, the Eligible Designated Beneficiaries can each receive "stretch" distributions over their own life expectancy – while only the Non-Eligible Designated Beneficiaries will be subject to the 10-Year Rule, and non-designated beneficiaries would be subject to the 5-year rule.
- IMPORTANT NOTE: The IRS regulations only allow this 'separate accounting' treatment when the trust document includes a provision to divide the trust into separate sub-trusts before the account owner's death. The trust document must also specify how the retirement account is to be allocated among the individual sub-trusts– the trustee cannot be granted discretion to make those decisions after the fact. Additionally, the trust must already qualify as a see-through trust; otherwise, any non-individual beneficiaries will cause the entire trust to be considered a Non-Designated Beneficiary, regardless of whether it's divided into separate sub-trusts after the owner's death.
- There are more exceptions to follow.

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Applying the Rules to Trusts, Cont.

- Designated Beneficiary Trusts fall into one of two basic types, Conduit Trusts and Accumulation Trusts.
- If the Trust is a Conduit Trust, each designated beneficiary's status will be used to determine the applicable RMD rule for that beneficiary. Thus, a trust for a designated beneficiary will use the Ten-year rule, possibly modified by the Ghost Rule; and a trust for an Eligible Designated Beneficiary will utilize the stretch or life expectancy rules for the beneficiary receiving the distributions.
- If the trust is an accumulation trust, the calculations are more complicated as the life expectancy divisor or denominator is based on the factor for the oldest countable beneficiary. This could impact the RMD for an Eligible Designated Beneficiary who is young, when other potential beneficiaries are older. For example, where assets are payable to an older sibling on the death of an EDB.

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Applying the Rules to Trusts Which Beneficiaries Count

- The determination of which beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee...depends on whether the see-through trust is a conduit trust or an accumulation trust."
- Under the proposed regulations, potential beneficiaries of each trust are collected and tested under a two-tier system.
- First-Tier beneficiaries count. Second-Tier beneficiaries may or may not count.
- First-tier beneficiaries are beneficiaries who "could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary..." Essentially, a beneficiary who is entitled or eligible to receive distributions after the death of the participant; the first-tier beneficiary does not have to wait until some other beneficiary dies.
- Under a Conduit Trust, all distributions will, upon receipt by the trustee, be paid "directly to, or for the benefit of, specified beneficiaries." The "specified beneficiaries" are thus first-tier beneficiaries.

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Applying the Rules to Trusts Which Beneficiaries Count, Cont.

- A second-tier beneficiary is a beneficiary "that could receive amounts in the trust representing the employee's interest in the plan that were not distributed to the first-tier beneficiaries.
- Once you identify the beneficiaries as second tier, you must determine which second-tier beneficiaries you can "disregard," i.e., they will not be "countable" in testing the trust in question.
- In a Conduit Trust, all second-tier beneficiaries are disregarded.
- In an Accumulation Trust, second-tier beneficiaries are generally counted. However, under the regulations applicable to the Secure Act certain second-tier beneficiaries can be excluded.

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Applying the Rules to Trusts
Excluding Second Tier Beneficiaries

In an **Accumulation Trust**, second-tier beneficiaries are normally counted. However, under the regulations, a second-tier beneficiary is disregarded if he/she/it would be entitled to a share only if another second-tier beneficiary fails to survive the first-tier beneficiary(ies).

For example, if A is the Primary Beneficiary and on A's death B, becomes the beneficiary, and on B's death the remaining funds go to charity, only A and B are counted in determining if the trust is a DBT or an EDBT and for determining RMDs.

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Applying the Rules to Trusts
Multi-beneficiary Trusts

- Most of our discussion thus far has centered around Trusts with one primary beneficiary. We must also deal with the possibility of multiple beneficiary trusts. This is a trust where distributions are made to multiple beneficiaries from a single trust. One example is where parents want to pay the expenses of their children until the youngest reaches a certain age before division into separate shares.
- As a general rule if any beneficiary of a Designated Beneficiary Trust is not an EDB, the ten-year rule applies to the retirement funds, possibly modified by the ghost rule. If **all of** the beneficiaries are EBTs the life expectancy (Stretch)rule applies, and the oldest beneficiary's age is used to determine the denominator.
- **As discussed above, identifying the Trust to be tested is important**.

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Applying the Rules to Trusts
Multi-beneficiary Trusts Cont.

- There are three primary exceptions to the general rule;
  - The Trust Division Rule Discussed above
  - The Minor Child Exception
  - And the Disabled or Chronically Ill exception.
- Under the minor child exception, if a trust is for the benefit of multiple children, the trust will qualify for EBD treatment, with the ten-year trigger beginning when the youngest minor child reaches age 21. This is the case even if this is an accumulation trust. RMDs before the end of the 10-Year Rule based on the oldest beneficiary.
- For example, a multi-beneficiary trust is for three children, one 15, one 19, and one 25. The RMDs would be based on the life expectancy of the 25-year-old, until he or the 15-year-old reached age 21, and then the ten-year pull-out rule would start.
- The regulations define the majority of a child as age 21.

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Applying the Rules to Trusts
Multi-beneficiary Trusts Cont.

- The disable and chronically ill exception is more complicated.
- This exception breaks Multi-beneficiary trust in which one of the beneficiaries is disabled or chronically ill into two types of Applicable Multi-Beneficiary Trusts (AMBTs)
  - AMBT Type I – is a Trust that is divided immediately upon the death of a plan participant or IRA owner into separate trusts for each beneficiary, of which one is a disabled or chronically ill person.
  - AMBT Type II – is a Trust in which one or more disabled or chronically ill persons are entitled to benefits during his, her, or their lifetimes, and no other beneficiary is entitled to benefits under the trust until all the disabled or chronically ill Eligible Designated Beneficiaries are deceased. (This was designed to accommodate a Special Needs Trust.)
- Under an AMBT Type I Trust, the beneficiary or beneficiaries of each sub-trust, determines how the RMD rules apply to the sub-trust. If the beneficiary is a DB only, the ten-year rule applies. If the sub-trust beneficiary is an EDB, the Stretch Lifetime rules apply.
- Under the AMBT Type II Trust, so long as the disabled or chronically ill EDB lifetime beneficiary is alive, the stretch or lifetime rules apply. If there is more than one disabled or chronically ill EDB, the life expectancy of the oldest will be used. Upon the death of the last EDB, the Ten-Year Rule applies.

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So let's review the RMD Rules As they apply to Individual Beneficiaries

	Owner Died Before RBD	Owner Died After RBD
Designated Beneficiary (not an EDB)	10 Year Rule	10 Year Rule modified by the Ghost Rule. I.E. annual distributions based on Ghost Life Expectancy, with remaining funds distributable in tenth year after Participant's Death.
Eligible Designated Beneficiary other than Spouse and Minor Child	Life Expectancy Rule	Life Expectancy (Stretch) Rule
Minor Child	Life Expectancy Rule until majority (Age 21) then 10 Year Rule	Life Expectancy Rule until majority (Age 21) then 10 Year Rule
Surviving Spouse Not Electing Roll Over IRA	Spouse Life Expectancy Rule	Spouse Life Expectancy Rule
Non-Designated Beneficiary	Five Year Rule	5 Year rule modified by Ghost Rule – I.E. Deceased Owner's Remaining Life Expectancy or 5 Year rule whichever is shorter

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Review of RMD Rules As they Relate to Trusts Participant Dies Before RBD

Type of Trust	Type of Bene.	Surviving Spouse	Minor Child	Bene. Less Than 10 Years Younger	Disabled or Chronically Ill Beneficiary	Non-Eligible Designated Beneficiary
Designated Beneficiary Conduit Trust		Life Expectancy Rule	Life Expectancy until majority (age 21) then 10 Years	Life Expectancy Rule	Life Expectancy Rule	Ten Year Rule
Designated Beneficiary Accumulation Trust Not all countable Benef. are EDBs		Ten Year Rule	Life Expectancy rule Until the Youngest Minor Beneficiary is 21, then Ten Years.	Ten Year Rule	AMBT Trust Rules	Ten Year rule
AMBT Trust Type II Trust		Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	N/A
Non-Designated Beneficiary Trust		5 Year Rule	5 Year Rule	5 Year Rule	5 Year Rule Subject To AMBT rules if one bene is Disab. or CI	5 Year Rule

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Review of RMD Rules As they Relate to Trusts Participant Dies After RBD

Type of Trust	Type of Bene.	Surviving Spouse	Minor Child	Bene. Less Than 10 Years Younger	Disabled or Chronically Ill Beneficiary	Non-Eligible Designated Beneficiary
Designated Beneficiary Conduit Trust		Longer of Life Expectancy of Spouse and Ghost Life of Deceased Participant	Life Expectancy until majority (age 21) then 10 Years	Life Expectancy Rule	Longer of Life Expectancy of D/CI Beneficiary or Ghost Life of Deceased Participant	Ten Year Rule
Designated Beneficiary Accumulation Trust Not all countable Benef. are EDBs		Ten Year Rule	Life Expectancy rule Until Oldest Minor Beneficiary is 21, then Ten Years.	Ten Year Rule	AMBT Trust Rules	Ten Year rule
AMBT Trust Type II Trust		Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	Life expectancy of oldest Disab. or CI Beneficiary	N/A
Non-Designated Beneficiary Trust		5 Year Rule	5 Year Rule	5 Year Rule	5 Year Rule Subject To AMBT rules if one bene is Disab. or CI	5 Year Rule

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Planning Points

- If you plan to leave retirement funds to a trust, consider using a stand-alone retirement plan trust. Many issues need to be covered in that trust, which would not necessarily impact other aspects of a more general trust. Also, you reduce the risk of accidentally creating a trust that does not qualify as a Designated Beneficiary Trust.
- Name sub-trusts for individuals in the retirement fund beneficiary designation rather than the “funding trust.”
- When you name a trust as a beneficiary of retirement plans, try to ensure that there is only one primary beneficiary.
- Use Conduit Trusts whenever possible, given the goals of the family.
- If you choose to use an Accumulation Trust, be sure you identify the likely countable beneficiaries to assure you do not violate the Designated Beneficiary Trust Rules.

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South Carolina Bar
Continuing Legal Education Division

ABLE Act Accounts

Barbara Brunson

ABLE Accounts Overview

1. Established by The Stephen Beck, Jr., ABLE Act of 2014 (codified 26 U.S.C. § 529A et seq)

2. IRS Regulations (codified 26 C.R.R. § 1.529A-0 et seq)

3. Palmetto Able Saving Program (SC Code § 11-5-400 et seq)

    a. Stable Accounts – The Palmetto Abe Savings program authorizes individuals with a disability or their families to save private funds that can be used to provide for disability related expenses in a way that supplements, but does not supplant, benefits provided through private insurance, the Medicaid program, the supplemental security income program, the beneficiary's employment, and other sources.
    b. The Palmetto ABLE savings Expense Fund is established in the Office of the State Treasurer.

4. Eligibility
    a. SC resident who developed a qualifying disability before the age of 26.
    b. If the disabled person cannot open an account for themselves, an authorized representative can open the account for them.

5. Benefits
    a. Accountholders can deposit and invest up to $19,000 a year (if employed, up to $15,060).
    b. The deposit will not affect SSI if the balance stays below $100,000).
    c. Other federal means-tested benefits are not affected by the amount saved.

6. Qualified expenses?
    a. Living expenses
    b. Education
    c. Housing
    d. Transportation
    e. Employment training and support
    f. Assistive technology
    g. Personal support services
    h. Health, prevention and wellness expenses
    i. Financial management
    j. Administrative services
    k. Legal fees
    l. Oversight and monitoring
    m. Funeral and burial expenses

7. Contact information

    SC State Treasurer (800) 439-1653 or https://palmettoable.com/

S.C. Code § 11-5-400 Palmetto Able Savings Program Created

Library:	South Carolina Code of Laws
Edition:	2025
Currency:	Current through 2025 Act No. 94.
Citation:	S.C. Code § 11-5-400
Year:	2025

Id. vLex Fastcase: VLEX-1067333883

Link: https://fastcase.vlex.com/vid/s-c-code--1067333883

There is established the "Palmetto ABLE Savings Program". The purpose of the Palmetto ABLE Savings Program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds which can be used to provide for disability related expenses in a way that supplements, but does not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources; and to provide guidelines for the maintenance of these accounts.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-400

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-410 Definitions

Library:	South Carolina Code of Laws
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Citation:	S.C. Code § 11-5-410
Year:	2025

Id. vLex Fastcase: VLEX-1067334038

Link: https://fastcase.vlex.com/vid/s-c-code--1067334038

As used in this article:

(1) "Palmetto ABLE account" or "account" means an individual savings account established in accordance with the provisions of this article and pursuant to Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) "Account owner" means the person who enters into a Palmetto ABLE account agreement pursuant to the provisions of this article. The account owner also must be the designated beneficiary; however, a trustee, guardian, or conservator may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement. Also, the agent of the designated beneficiary acting under durable power of attorney may open and manage an account on behalf of and in the name of a designated beneficiary who lacks capacity.

(3) "Designated beneficiary" means an eligible individual whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary so long as the new beneficiary is an eligible individual who is a qualified member of the family of the designated beneficiary at the time of the change.

(4) "Eligible individual", as defined in Section 529A(e)(1) of the federal Internal Revenue Code of 1986, as amended, means:

(a) an individual who is entitled to benefits based on blindness or disability pursuant to 42 U.S.C. Section401, et seq., or 42 U.S.C. Section1381, as amended, and the blindness or disability occurred before the date on which the individual attained age twenty-six; or

(b) an individual with respect to which a disability certification, as defined in Section 529A(e)(2) of the federal Internal Revenue Code of 1986, as amended, to the satisfaction of the Secretary of the United States Treasury is filed with the Secretary for a taxable year and the blindness or disability occurred before the date on which the individual attained age twenty-six.

(5) "Financial organization" means an organization authorized to do business in this State and is:

(a) licensed or chartered by the Director of Insurance;

(b) licensed or chartered by the State Commissioner of Banking;

(c) chartered by an agency of the federal government; or

(d) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(6) "Management contract" means a contract executed by the State Treasurer and a program manager selected to act as a depository or manager of the program, or both.

(7) "Member of the family" has the meaning defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(8) "Nonqualified withdrawal" means a withdrawal from an account which is not:

(a) a qualified withdrawal; or

(b) a rollover distribution.

(9) "Program" means the Palmetto ABLE Savings Program established pursuant to this article.

(10) "Program manager" means a financial organization or an agency or department of another state that has been designated to administer a qualified ABLE Program selected by the State Treasurer to act as a depository or manager of the program, or both.

(11) "Qualified disability expense" means any qualified disability expense included in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(13) "Rollover distribution" means a rollover distribution as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(14) "Savings agreement" means an agreement between the program manager or the State Treasurer and the account owner.

(15) "Secretary" means the Secretary of the United States Treasury.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-410

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-420 Administration of Program

Library:	South Carolina Code of Laws
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Currency:	Current through 2025 Act No. 94.
Citation:	S.C. Code § 11-5-420
Year:	2025

Id. vLex Fastcase: VLEX-1067333997

Link: https://fastcase.vlex.com/vid/s-c-code--1067333997

(A) The State Treasurer shall implement and administer the program under the terms and conditions established by this article. The State Treasurer has the authority and responsibility to:

(1) develop and implement the program in a manner consistent with the provisions of this article;

(2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the Secretary and the federal Internal Revenue Service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529A of the federal Internal Revenue Code of 1986, as amended;

(5) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;

(6) develop marketing plans and promotional materials;

(7) establish the methods by which the funds held in accounts must be dispersed;

(8) establish the method by which funds must be allocated to pay for administrative costs;

(9) do all things necessary and proper to carry out the purposes of this article;

(10) adopt rules and promulgate regulations necessary to effectuate the provisions of this article;

(11) prepare an annual report of the Palmetto ABLE Savings Program to the Governor, the Senate, and the House of Representatives; and

(12) notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(B) The State Treasurer may contract with other states in developing the program.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-420

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-430 Program Managers; Management Contracts; Exchange of Data Authorized

Library: South Carolina Code of Laws
Edition: 2025
Currency: Current through 2025 Act No. 94.
Citation: S.C. Code § 11-5-430
Year: 2025

Id. vLex Fastcase: VLEX-1067334102

Link: https://fastcase.vlex.com/vid/s-c-code--1067334102

(A) The State Treasurer may implement the program through use of program managers as account depositories or managers, or both. The State Treasurer may solicit proposals from program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the program. The State Treasurer may select as program depositories or managers the program managers, from among the bidding program managers, that demonstrate the most advantageous combination, both to potential program participants and this State, of the following factors:

(1) financial stability and integrity of the program manager;

(2) the safety of the investment instrument being offered;

(3) the ability of the program manager to satisfy recordkeeping and reporting requirements;

(4) the program manager's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization requires;

(7) the ability of the program manager to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of the operation of the program.

(B) The State Treasurer may enter into contracts with program managers necessary to effectuate the provisions of this article. A management contract must include, at a minimum, terms requiring the program managers to:

(1) take action required to keep the program in compliance with requirements of this article and take actions not contrary to its contract to manage the program to qualify as a "qualified ABLE Program" as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended;

(2) keep adequate records of each account, keep each account segregated, and provide the State Treasurer with the information necessary to prepare the statements required by Section 11-5-440;

(3) compile and total information contained in statements required to be prepared under Section 11-5-440 and provide compilations to the State Treasurer;

(4) if there is more than one program manager, provide the State Treasurer with information as is necessary to determine compliance with Section 11-5-440;

(5) provide the State Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article, and Section 529A of the federal Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner, owners, or the designated beneficiary;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager, with the approval of the State Treasurer, and provide the results of the audit to the State Treasurer;

(8) provide the State Treasurer with copies of all regulatory filings and reports made by the program manager during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports that are not part of the program. The program manager shall make available for review by the State Treasurer the results of the periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that a report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(C) The State Treasurer may:

(1) enter into contracts as he considers necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the State Treasurer has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager; and

(3) terminate or not renew a management agreement. If the State Treasurer terminates or does not renew a management agreement, the State Treasurer shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(D) The State Treasurer, the Department of Social Services, the Department of Health and Human Services, and the Department of Disability and Special Needs are authorized to exchange data regarding eligible individuals to carry out the purposes of this article.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-430

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-440 Opening of Account By Designated Beneficiary; Contributions; Account Owner Powers; Distributions; Accounting; Tax Exemption

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Citation:	S.C. Code § 11-5-440
Year:	2025

Id. vLex Fastcase: VLEX-1067334066

Link: https://fastcase.vlex.com/vid/s-c-code--1067334066

(A) A Palmetto ABLE account established pursuant to the provisions of this article must be opened by a designated beneficiary, a designated beneficiary's agent under a durable power of attorney, a trustee holding funds for the benefit of a designated beneficiary, or a court appointed guardian or conservator of a designated beneficiary. Each designated beneficiary may have only one account. The State Treasurer may establish a nonrefundable application fee. An application for an account must be in the form prescribed by the State Treasurer and contain the following:

(1) name, address, and social security number of the account owner;

(2) name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the State Treasurer may require.

(B) A person may make contributions to a Palmetto ABLE account after the account is opened, subject to the limitations imposed by Section 529A of the federal Internal Revenue Code of 1986, as amended, or any adopted rules and regulations promulgated by the State Treasurer pursuant to this article.

(C) Contributions to a Palmetto ABLE account may be made only in cash. The State Treasurer or program manager shall reject or withdraw contributions promptly:

(1) in excess of the limits established pursuant to subsection (B); or

(2) the total contributions if the:
(a) value of the account is equal to or greater than the account maximum established by the State Treasurer. The account maximum must be equal to the account maximum for post secondary education savings accounts; or
(b) designated beneficiary is not an eligible individual in the current calendar year.

(D)

(1) An account owner may:
(a) change the designated beneficiary of an account to an individual who is a qualified member of the family of the prior designated beneficiary in accordance with procedures established by the State Treasurer; and
(b) transfer all or a portion of an account to another ABLE account, the designated beneficiary of which is a member of the family as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) An account owner may not use an interest in an account as security for a loan. A pledge of an interest in an account is of no effect.

(E)

(1) If there is any distribution from an account to an individual or for the benefit of an individual during a calendar year, the distribution must be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(2) A statement must be provided to each account owner annually and at other increments established by the State Treasurer in the program guidelines. The statement must contain the information the State Treasurer requires to be reported to the account owner.

(3) A statement and information relating to an account must be prepared and filed to the extent required by this article and other state or federal law.

(F)

(1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Funds held in a Palmetto ABLE account:
(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary;
(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid; and
(c) following the death of a designated beneficiary, may be subject to recovery by the South Carolina Department of Health and Human Services up to an amount equal to the total of Medicaid benefits, if any, paid on behalf of the designated beneficiary by the state Medicaid program, but only to the extent recovery is required by state or federal law. Recovery by the State is subject to regulations imposed by the Secretary.

(3) The amount distributed from a Palmetto ABLE account for the purposes of paying qualified disability expenses:
(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary; and
(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid.

(G) To the extent earnings in an ABLE account and distributions from an ABLE account, or a qualified account under Section 529A located in another state, are not subject to federal income tax, they will not be subject to state income tax.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-440

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-450 Accounts Not Guaranteed By the State; Rules and Regulations

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Citation:	S.C. Code § 11-5-450
Year:	2025

Id. vLex Fastcase: VLEX-1067334220

Link: https://fastcase.vlex.com/vid/s-c-code--1067334220

(A) Nothing in this article may create or be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of an account owner or designated beneficiary with respect to the:

(1) return of principal;

(2) rate of interest or other return on an account; or

(3) payment of interest or other return on an account.

(B) The State Treasurer may adopt rules and promulgate regulations to provide that each contract, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-450

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

(A) The Palmetto ABLE Savings Program Trust Fund is established in the Office of the State Treasurer. The trust fund must be utilized if the State Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. The trust fund must consist of any monies deposited by account owners and other contributors pursuant to the provisions of this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of monies in the trust fund must be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered monies in the trust fund must remain in the fund and not be credited or transferred to the state general fund or to another fund.

(B)

(1) The Palmetto ABLE Savings Expense Fund is established in the Office of the State Treasurer. The expense fund must consist of monies received from the Palmetto ABLE Savings Program manager or managers, governmental or private grants, and state general fund appropriations, if any, for the program.

(2) All expenses incurred by the State Treasurer in developing and administering the Palmetto ABLE Savings Program must be payable from the Palmetto ABLE Savings Expense Fund.

History: Amended by 2019 S.C. Acts, Act No. 88 (HB 3986),s 1, eff. 5/24/2019.
Added by 2016 S.C. Acts, Act No. 165 (HB 3768), s 1, eff. 4/29/2016.

Cite as: S.C. Code § 11-5-460

Editor's Note:

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

S.C. Code § 11-5-460 Palmetto Able Savings Program Trust Fund Established; Palmetto Able Savings Expense Fund Established

Library:	South Carolina Code of Laws
Edition:	2025
Currency:	Current through 2025 Act No. 94.
Citation:	S.C. Code § 11-5-460
Year:	2025

Id. vLex Fastcase: VLEX-1067334259

Link: https://fastcase.vlex.com/vid/s-c-code--1067334259