

# CORLISS LAW GROUP, PC

26 Pumphouse Road Cortlandt Manor, NY 10567

Tel: 914-930-8400 Fax: 888-549-2018

245 E. 93rd Street  
New York, NY 10128

135 Katonah Avenue  
Katonah, NY 10536

359 East Main Street  
Mt. Kisco, NY 10549

96 Parkway West  
Mount Vernon, NY 10552

## Marie A. Corliss, Esq.

Principal Attorney  
Admitted to Practice in NY  
[marie@corlisslawgroup.com](mailto:marie@corlisslawgroup.com)

## Alyssa Guarino, Esq.

Associate Attorney  
Admitted to Practice in NY & NJ  
[alyssa@corlisslawgroup.com](mailto:alyssa@corlisslawgroup.com)

## Cara A. Morea, Esq.

Associate Attorney  
Admitted to Practice in NY & CT  
[counsel@corlisslawgroup.com](mailto:counsel@corlisslawgroup.com)



## Henry M. Adler, Esq.

Of Counsel  
Admitted to Practice in NY  
[henry@corlisslawgroup.com](mailto:henry@corlisslawgroup.com)

### Paralegals:

Laura Lamia  
Sarah Irwin  
Allison Mizroch  
Andrea Dimitriou

### Legal Assistants:

Lisa Gona

### Office Manager:

Nick H. Corliss

**From: Marie A. Corliss, Esq.**

**Re: THE NY ABLE ACCOUNT**

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## MEMORANDUM

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“ABLE” is an acronym for “Achieving a Better Life Experience” legislation which was signed into law by President Obama in December of 2014, as part of the Tax Increase Prevention Act of 2014. The legislative intent of ABLE accounts is to provide a vehicle for disabled persons to have greater control and independence by permitting a private, tax-free savings account to supplement their means tested benefits available.

### A. Who May Participate:

1. Generally, to qualify for the ABLE account in NY, the individual with the disability must be a New York resident; the disability must have existed before age 26; and the account owner (beneficiary) must be entitled to either SSI or SSDI because of his or her disability;

2. If not entitled to SSI or SSDI, qualification can be established by providing a “disability certification” accompanied by a written diagnosis from a licensed physician documenting that the person was sufficiently disabled prior to age 26.

**B. Who can open a NY ABLE Account?**

1. The individual with the disability;
2. A parent or legal guardian of the eligible minor individual; or
3. An agent under a Power of Attorney on behalf of the individual

**C. Benefits/Restrictions of an ABLE Account:**

1. ABLE accounts will be disregarded when determining the beneficiary’s eligibility for most means-tested federal benefits available to individuals with disabilities.
2. Funds may be used to pay for Qualified Disability Expenses (See below).
3. ABLE Accounts are tax qualified accounts. The money earned on these accounts are federally and state tax deferred and distributions are on an income tax free basis if the distributions are made for qualified disability expenses.
4. The annual contribution in 2020 is no more than \$15,000 in the aggregate, from all sources. While there is only one owner-beneficiary of the account (the disabled party), anyone may contribute, as long as the contributions from all sources for a given calendar year does not exceed the annual exclusion amount.
5. There is a \$100,000 limit on the amount that can be accumulated in the account. Up to \$100,000,00 is disregarded for Supplemental Security Income and Medicaid benefit eligibility.
6. Medicaid Reimbursement – upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of all outstanding qualified disability expenses (enumerated below), must be used to reimburse the State for Medicaid benefits received by the designated beneficiary, if NYS files a claim for reimbursement.

**D. For what Expenses may the Funds Be Used?**

1. A Qualified Withdrawal is a withdrawal used to pay for any Qualified Disability Expenses of the Account Owner.
2. “Qualified Disability Expenses” are expenses that:

- a. are incurred at a time when the account owner is an eligible individual;
  - b. related to the blindness or disability of the Account Owner, and
  - c. are for the benefit of the account owner in maintaining or improving his or her health, independence, or quality of life.
3. Qualified Disability Expenses include expenses related to the account owner's education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial expenses, basic living expenses, and other expenses that may be identified from time to time by the IRS.
4. With respect to Basic Living Expenses – for ABLE purposes, food is considered a basic living expenses; therefore, expenses related to the purchase of food by the Account Owner are Qualified Disability Expenses.
5. Documentation (for example, receipts) of all distributions for Qualified Disability Expenses should be maintained for audit purposes.

**E. How to Set up an ABLE Account:**

1. To open an Account, a qualified person (see paragraph B above as to who may open the account) must complete an Enrollment Form, which may be done online or by a paper form. This information can be found at: <https://www.mynyable.org/>
2. To be an account owner of the NY ABLE program, one must:
  - a. be an eligible individual;
  - b. be a U.S. citizen or resident alien;
  - c. have a social security number or tax identification number;
  - d. have a valid permanent U.S. street address; and
  - e. have residency in the state of New York (for the NY ABLE acct.)

**F. Advantages of the ABLE Account over the First Party Supplemental Needs Trust**

1. Funeral and burial services can be purchased with ABLE funds for the account owner whereas generally they cannot be paid from the Supplemental Needs Trust;
2. The ABLE funds can be spent on food and housing expenses for the account owner without causing a reduction of Supplemental Security Income or Medicaid benefits

on the condition that the food and housing expenses are paid in the same month of withdrawal from the ABLE acct.

3. Payback to Medicaid after the account owner dies is only for Medical Services provided after the Account was open- whereas a First Party Supplemental Needs Trust is subject to payback for all Medicaid services rendered.

For More information call: 1.855.5NY.ABLE (1.855.569.2253) Monday – Friday from 8 a.m. – 8 p.m. ET