

insights

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Private family trust companies authorized under new Missouri law

The new Missouri Family Trust Company Act allows families to establish their own family-owned and -controlled private trust companies, which can hire banks and public trust companies to assist with investment and management functions.

The law, which will become effective August 28, will authorize the creation of family trust companies owned and controlled exclusively by, and established solely for the benefit of, related members of a family. These family trust companies **will not** be subject to the same regulatory oversight applicable to trust companies serving the general public.

Benefits

Potential benefits for a family to establish a family trust company may include:

- convenient access to, and control of, family assets, while still utilizing services of professional wealth managers as needed for assistance;
- solution to challenges of successor trustee issues, both individual trustees terminating service and institutional trustees involved in mergers and acquisitions;
- privacy regarding family financial issues;
- liability protection of a limited liability company or corporation as compared to an individual serving as trustee;
- uniform family corporate governance structure for wealth management;
- risk management approaches that more directly reflect the perspectives and needs of the family; and
- flexibility in investment options.

However, setting up and running a family trust company would also involve costs and certain burdens, such as regulatory examinations and oversight.

Organizational requirements

Under the law, a family trust company must be a corporation or limited liability company organized or qualified to do business in Missouri, and can have its main office in another state where it is licensed to conduct family trust company business. However, a family trust company cannot be owned by an entity from a foreign country. Each family trust company must be governed by a board of at least three directors or managers, with at least one such director or manager being a resident of Missouri. The law imposes certain restrictions on a family trust company's organizational documents and corporate name.

Registration requirements

Each family trust company must register with the Missouri Secretary of State as a family trust company and pay an initial \$5,000 filing fee. Thereafter, annual filings with the Secretary of State, and related annual fees of \$1,000, are required.

Capital and operational requirements

Each family trust company must have:

- at least \$250,000 in capital in the form of cash or U.S. Treasury obligations;
- at least one physical office in Missouri;
- a bank deposit account at a state or nationally chartered financial institution with its main office or a branch in Missouri; and
- all required state and local licenses and permits to do business.

A family trust company can also procure director and officer insurance coverage, fidelity bond coverage and other insurance related to its operations and potential risk exposure.

Regulation and examinations

Family trust companies will be regulated by the Missouri Secretary of State, rather than the Missouri Division of Finance, which regulates trust companies serving the general public. Although not required to conduct regularly scheduled examinations of family trust companies, the Secretary of State can examine or investigate any family trust company at any time to determine legal compliance. The family trust company will be legally obligated to pay the costs of any such examinations or investigations. The Secretary of State also has the authority to issue enforcement orders against family trust companies or persons or entities affiliated with family trust companies, based on violations of law or other prohibited acts. Penalties can include, but are not limited to, removal of a person from the operations of a family trust company and ordering a family trust company to cease its trust company operations.

Confidentiality issues

Subject to certain exceptions, the Missouri Secretary of State's Office is required by law to keep family trust company records in its possession confidential. This confidentiality duty applies to examination information and the names of equity owners of the family trust company. Also, an emergency regulatory order issued by the Secretary of State against a family trust company is confidential until the order becomes permanent.

The family trust company itself is required to keep certain records regarding its business, some of which must be kept at the family trust company's principal office. The family trust company's records are generally considered confidential, but are subject to examination by the Secretary of State and to disclosure as required by subpoena or as otherwise required by law. Equity owners in the family trust company also have rights of inspection with regard to certain records, and customers have rights with regard to their records.

Powers and prohibited conduct

Each family trust company will have broad authority to serve as a fiduciary or agent in various roles, as well as the power to invest its own funds (i.e. non-fiduciary funds) in any securities or other assets. However, each family trust company will be subject to special conflict of interest rules, including rules governing investment of fiduciary funds in securities issued by the family trust company or an affiliated company or in securities in which that family trust company or a family member has an interest or other relationship, such as underwriter, broker or investment advisor. The duty of loyalty for fiduciaries under Chapter 456 RSMo. generally applies to family trust companies. Family trust companies are prohibited from:

- engaging in "commercial banking,"
- advertising services to the public, and
- holding themselves out as trustees for hire.

Authority to delegate duties and powers

Each family trust company will have the power to delegate duties and powers, including investment and management functions. So, a family trust company could hire a public bank or trust company or an investment advisor to handle these functions.

Federal law

A Missouri-registered family trust company may have additional compliance requirements under federal law.

Please contact [Larry Katzenstein](#) of Thompson Coburn for more information about the Missouri Family Trust Company Act and related issues, including securities regulatory and tax issues.



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