

PRIVATE FAMILY TRUST COMPANIES

Find New Homes in Tennessee

Since 1999, when it was an early adopter of the state banking regulators' model private trust company act, Tennessee has earned a reputation for responding to the sophisticated trust and financial needs of ultra-high net worth families and their private offices. By enacting progressive trust laws building on the uniform trust code, Tennessee is attracting a growing number of family offices that are seeking flexibility to adapt to changes in family circumstances and the world around them. These families find a favorable environment in Tennessee for asset protection, community property trust laws, purpose trusts, silent trusts, and other types of trusts and private trust companies to serve as their trustees.

To maintain the state's leadership position as a venue for ultra-high net worth families, Tennessee evaluates the effectiveness of the state's trust and private family trust company (PFTC) laws annually. In response to these assessments, the Haslam administration determined to update its laws in 2016 to ensure that such families and family offices enjoy the full benefits of the use of private family trust companies.

The PFTC law amendments dramatically expand the universe of family members, or family clients, who may be served by a PFTC. PFTCs in almost all other states allowing them are limited to a single "designated relative." The effect is to make out-laws out of a large portion of the designated relative's in-laws by excluding more of the spouse's extended family than the designated relative's. Recognizing the difficulties created by this limitation, Tennessee amended its laws, and now PFTCs no longer have to choose between spouses.

There can be two designated relatives, which effectively doubles the number of family clients. Simply put, Tennessee recognizes that a family really consists of two family trees. The new law permits individuals who are or have been married and who are living or deceased to



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be named the designated relative of the PFTC. There can even be more than two designated relatives if the additional designee is or has been married to one of the original designated relatives.

The authors of the banking regulators' model trust company law, which Tennessee substantially adopted in 1999, and the primary contributors to Governor Haslam's administration bill, Tennessee's new amended family client definition, John Duncan and Miles Padgett of Kozusko Harris Duncan, observe that "When we wrote the model act, the limited definition of "family client" was groundbreaking, but it had the inadvertent effect of limiting which members of one spouse's family could be served. With Tennessee's new provision we have 'made amends'."

The new Tennessee laws also recognize the evolution of the family unit and broaden the definition of "family member" to include adopted children, stepchildren from either a spouse or former spouse, foster children, or individuals who were minors when a family member was granted legal guardianship. Tennessee also added a new "common sense" provision that ensures a family

client continues to be a family client notwithstanding the cessation of the relationship due to death, divorce, retirement or a similar event. Tennessee also expanded the definition of family client to include individuals who are related to the designated relative within the 12th degree of lineal kinship or the 11th degree of collateral kinship – including spouses and former spouses. Family clients may also include the estate of a family member, trusts established by family clients or trusts that benefit family clients.

Family clients may now include charitable and not-for-profit organizations in which a family client is an organizer, officer, board member, trustee or donor who contributes a substantial portion of the organization's assets. Officers, directors, trustees, managers of these organizations may also be included as family clients.

People working for the PFTC and the officers and directors of the family office and the businesses which are controlled by the family also qualify as family clients. Furthermore, the new law permits full-time employees of the family, e.g., household employees, accountants, etc., as family clients.

"Governor Bill Haslam wants Tennessee to be a great place to do business," said Greg Gonzales, Commissioner of the Tennessee Department of Financial Institutions. "Based on Governor Haslam's vision, our department seeks to create a safe and sound regulatory environment for private family trust companies to operate within while making efforts to put trust companies in the best position to be successful. The Department initiated and coordinated this legislation with the private sector as an important way to meet the Governor's goals."

Regulated Tennessee PFTCs are exempt from registration with the SEC under the federal Regulated Investors Act of 1940 because they are supervised by the state's banking regulators, and SEC regulation would be duplicative. The SEC recently adopted a "Single Family Office Rule" to exempt some single family offices and unregulated PFTCs (as allowed by some states) from registration, but its definition of family members who may be served is far more limited than Tennessee's PFTC law. Today, Tennessee PFTCs may extend the benefits of inclusion to the largest universe of family members of any state in the country.

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