

Holland & Knight



A COMPARISON OF STATE PTC LAWS

Private Trust Company Research

A side-by-side comparison of Private Trust Company laws across eight key states

JUNE 2024

TOPIC	Ohio	Florida	Texas	Tennessee
Annual Reporting	Licensed: quarterly financial reporting required unless provided by an external CPA/auditor; if so, annually	Yes	Yes	Yes (annual certification)
Required Board Meetings	Quarterly, with at least two per year in Ohio at which a quorum of board members must be physically present	Silent	Quarterly	Not Required
Physical Office in State	Yes; must also partly conduct three out of six key administrative activities in Ohio	Yes	Yes; at least one executive officer must maintain an office at the Texas home office	Yes
Residency of Personnel	At least one resident board member and at least one part-time employee in Ohio	At least one state resident board member required	Generally, requires a majority of board members to be residents, confirmed by regulator, but regulator says some exemptions could apply	Not Required
Regulated or Unregulated PTCs	May be either Regulated or Unregulated (this table provides information for Regulated PTCs only)	May be either Regulated or Unregulated (this table provides information for Regulated PTCs only)	Regulated	Regulated
Capital Requirements	At least \$200,000 and up to \$500,000 at discretion of Division of Financial Institutions	\$250,000 if one designated relative; \$350,000 if two designated relatives	\$2 million generally, but the regulator has discretion to, on a case-by-case basis and upon request by the applicant, reduce this amount	No required minimum; generally set by applicant; but most are \$100,000 or more
Liability Insurance/Bonding	Bond – At least \$1 million required for any active officer, manager or employee Directors and Officers (D&O) – At least \$1 million	Bond – \$1 million for each officer, director, manager D&O – \$1 million Casualty insurance recommended	Required for each director, manager, managing participant, officer and employee, but amount not specified; "Reasonable amounts," but can apply for exemption for an individual	Generally determined by the company
Application Fee	\$5,000	\$10,000	\$10,000 plus \$10,000 investigation fee	\$1,000
Annual Fees Paid to Regulator	Currently no annual fee	\$1,500 (additional annual fees and 5.5 percent corporate income tax)	Cost of examinations	Currently \$250 (increase is anticipated during 2024) and cost of examinations
Number of Designated Relatives	One	Up to two designated relatives, as long as those designated relatives have no common ancestors within three generations	One	Multiple designated relatives allowed, provided that all designated relatives were or are married to another designated relative

New Hampshire	Nevada	South Dakota	Wyoming	TOPIC
Yes, quarterly reports also required	Yes	Yes	Yes	Annual Reporting
Quarterly	Not mandated by statute, but regulator wants to see meeting minutes in submitted examinations	At least quarterly	At least annually	Required Board Meetings
No	Yes	Yes	Yes	Physical Office in State
Commissioner may require	At least one state resident officer required	At least one state resident director required and one-half of the directors must be U.S. citizens	Per regulator, none need to be state residents	Residency of Personnel
Regulated	May be either Regulated or Unregulated (this table provides information for Regulated PTCs only)	Regulated	May be either Regulated or Unregulated (this table provides information for Regulated PTCs only)	Regulated or Unregulated PTCs
\$200,000	\$300,000	Not less than \$200,000, plus creditors' security pledge of \$100,000 – \$500,000 escrowed with Division of Banking	Not less than \$500,000	Capital Requirements
Bond and Errors and Omissions (E&O) insurance required; suitable amount (within reason, per regulator)	PTC determines amount	Bond – \$1 million D&O – \$1 million	\$1 million bond, but can pledge entire capital instead	Liability Insurance/Bonding
\$15,000	\$3,000 (\$1,500 application fee and \$1,500 initial licensing fee)	\$5,000	\$15,000	Application Fee
Currently, approximately \$2,000 per \$1 billion of assets under supervision	\$1,500	\$3,750-\$20,000, calculated at \$.07 for every \$10,000 of assets at year end, \$3,750 minimum	Based on total assets and set by rule of regulator: Less than \$3 million – \$7,500; greater than \$3 million – \$12,500	Annual Fees Paid to Regulator
One. Can be changed once every 10 years	One	No statutory provision but "usually for the benefit of a single-family lineage"	One	Number of Designated Relatives

TOPIC	Ohio	Florida	Texas	Tennessee
Community Property Trust	No	Yes	No (No elective community property trust)	Yes
Rule Against Perpetuities	Perpetual	360 years if trust created between Dec. 31, 2000, and June 30, 2022 1,000 years if created on or after July 1, 2022	300 years if effective on or after Sept. 1, 2021	360 years
Notice Required for Decanting	Yes	Yes	Yes	No
Directed Trust	Yes	Yes	Yes	Yes
Asset Protection Trust	Yes	No, except for dissolution of marriage	No	Yes
Statute of Limitations for Asset Protection Trust	18 months	Not applicable	Not applicable	18 months
Non-Judicial Settlements	Yes	Yes	Limited	Yes
Virtual Representation	Yes	Yes	Limited	Yes

New Hampshire	Nevada	South Dakota	Wyoming	TOPIC
No	No (No elective community property trust)	Yes	No	Community Property Trust
Perpetual	365 years	Perpetual	1,000 years if created after July 1, 2003	Rule Against Perpetuities
No	No	No	No	Notice Required for Decanting
Yes	Yes	Yes	Yes	Directed Trust
Yes	Yes	Yes	Yes	Asset Protection Trust
4 years	2 years	2 years	4 years	Statute of Limitations for Asset Protection Trust
Yes	Yes	Yes	Yes	Non-Judicial Settlements
Yes	Yes	Yes	Yes	Virtual Representation

TOPIC		Ohio	Florida	Texas	Tennessee
Scope of Permissible Clients for Private Trust Companies	<i>Lineal kinship to designated relative</i>	10 degrees	6 degrees	7 degrees	12 degrees
	<i>Collateral kinship to designated relative</i>	10 degrees	9 degrees	7 degrees	11 degrees
	<i>Adopted children</i>	Included	Silent	Included	Included
	<i>Stepchildren</i>	Included	Silent	Included	Included
	<i>Foster children</i>	Included	Silent	Included	Included
	<i>Spouse/former spouse</i>	Included	Included, plus those within 5 degrees of lineal kinship to spouse/former spouse	Included	Included, plus those within 5 degrees of lineal or collateral kinship to spouse/former spouse
	<i>Affiliated company</i>	Included	Included	Included	Included, plus company's officers/directors and their immediate families
	<i>Trusts with family member as settlor</i>	Included	Included if funded exclusively by one or more family members	Included	Included
	<i>Trusts with nonfamily member as settlor</i>	Included as long as one or more family clients are the only beneficiaries	Included if all noncharitable qualified beneficiaries are family members	Included if all noncharitable current beneficiaries are family clients	Included, if at least one family member is a beneficiary
	<i>Charities</i>	Included if funded exclusively by family clients	Included if the majority of the governing body members are family members	Included if the only beneficiaries are family clients or funded exclusively by family clients	Included if an organization whose primary purpose is not-for-profit, whether or not tax qualified, if a family client is an organizer, incorporator, member of board, trustee, major donor or noncharitable beneficiary, plus the officers, directors, individual trustees and managers of the charity, as well as the immediate families of such individuals and up to 35 full-time employees of family affiliates
	<i>Estates</i>	Included, which includes former family members and current/former key employees	Included if family member, or beneficiaries are family members	Included	Included
	<i>Nonfamily employees</i>	Included, which includes former "key employees" of family clients/PTC in certain circumstances	Up to 35 nonfamily members if the individuals are current or former employees of the PTC, or of trusts, companies or other entities that are defined as family members	"Key employees" of the PTC are included as well as former "key employees" for a reasonable time after leaving the PTC	Included if individual is an officer, manager or director of a family affiliate or a full-time employee of the PTC or a full-time employee providing personal services to a family member, as well as their immediate families. In addition, up to 35 individuals designated by the PTC who are full-time employees of a family affiliate are included.

New Hampshire	Nevada	South Dakota	Wyoming	TOPIC	
5 degrees or, alternatively, any individual who is a lineal descendant not more than 10 generations removed from designated relative	10 degrees	No statutory parameters-regulator determines scope of "family" on a case-by-case basis	10 degrees	<i>Lineal kinship to designated relative</i>	Scope of Permissible Clients for Private Trust Companies
9 degrees	9 degrees	Case-by-case	9 degrees	<i>Collateral kinship to designated relative</i>	
Included	Included	Case-by-case	Included	<i>Adopted children</i>	
Included	Included	Case-by-case	Included	<i>Stepchildren</i>	
Included	Silent	Case-by-case	Included	<i>Foster children</i>	
Included	Included, plus those within 5 degrees of lineal kinship to spouse/former spouse	Case-by-case	Included, plus those within 5 degrees of lineal kinship to spouse/former spouse	<i>Spouse/former spouse</i>	
Included if controlled by one or more family clients other than "key employee"/former "key employees"	Included, plus company's officers/directors and their immediate families	Case-by-case	Included	<i>Affiliated company</i>	
Included	Included	Case-by-case	Included	<i>Trusts with family member as settlor</i>	
Included if majority of noncharitable beneficiaries are family members	Included if noncharitable beneficiaries include one or more family members	Case-by-case	Included if noncharitable beneficiaries include one or more family	<i>Trusts with nonfamily member as settlor</i>	
Included if created by or substantially all contributions are from family clients	Included if a family member is an organizer, incorporator, officer, member of board, trustee, major donor or noncharitable beneficiary, and the officers, directors, individual trustees and managers of the charity, as well as the immediate families of such individuals	Case-by-case	Included if one or more family members are charity board members	<i>Charities</i>	
Included, including those of an incompetent family member, former family member, "key employee" or former "key employee"	Included	Case-by-case	Silent	<i>Estates</i>	
"Key employees"/former "key employees," including up to 35 designated employees/former employees of family entities. Also, with the Commissioner's approval a person who need not be an employee that has a close and continuous relationship with one or more family clients	Individual (as well as their spouse and children) included if a beneficiary under a will or trust created by a family member or if individual is an officer, manager or director of a family affiliate	Case-by-case	"Key employees"/former "key employees" of family affiliates and their spouses. Up to 20 designated former employees can be included	<i>Nonfamily employees</i>	

TOPIC	Ohio	Florida	Texas	Tennessee
Nature and Frequency of Examinations	<p>Within 18 months of initial license; as often thereafter as the superintendent considers necessary but at least once every 36 months</p> <p>May require attendance and exam under oath of any governing board member, officer, manager, employee or agent of a licensed family trust company</p>	<p>Examination at any time if believed PTC has violated or is about to violate statutory provisions, and the Office of Financial Regulation shall examine books and records every 36 months to determine whether the licensed family trust is operating in compliance with the state statute</p>	<p>Annually, but can be up to 18 months (per regulator), books and records, monitor compliance and look at accounts</p>	<p>Examination is in the discretion of the Department of Financial Institutions; generally, there is brief annual conference with a Department representative, while more formal examinations generally take place every three to five years, unless greater frequency is requested by the PTC</p>

Family Office Exemption under the Investment Advisers Act of 1940

With respect to the U.S. Securities and Exchange Commission (SEC) and the Federal Investment Advisors Act of 1940 (IAA), an entity treated as a "bank" as defined in the IAA is not required to register with the SEC as an investment advisor. A regulated private trust company, that is supervised and examined by state authorities should satisfy the definition of a "bank" under the IAA. Unregulated private trust companies may have to satisfy the SEC's "single-family office" exemption rule to avoid its registration requirements.

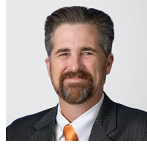
Under the IAA, "Bank" means A) a depository institution (as defined in Section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in Section 1(b) of the International Banking Act of 1978), B) a member bank of the Federal Reserve System, C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and that is supervised and examined by state or federal authority having supervision over banks, and that is not operated for the purpose of evading the provisions of the IAA and D) a receiver, conservator or other liquidating agent of any institution or firm included in clauses A), B), or C) of this paragraph.

Under the IAA, "Investment Adviser" does not include banks.

New Hampshire	Nevada	South Dakota	Wyoming	TOPIC
Examined every three years; can apply for exemption from annual financial audit	Can be examined at any time, if regulator determines that exam is necessary to ensure regulatory compliance; first examination within the first two years; subsequent exams will be within three years after prior exam if prior exam received a satisfactory rating (per regulator)	At least every three years review books and records (regulator suggests getting in a little earlier for the first one)	At least once every three years	Nature and Frequency of Examinations

Our Team

For more than 30 years, large family-owned and closely held businesses, high-net-worth individuals, family offices including their private trust companies, and tax-exempt organizations around the world have sought out our team to provide practical tax, business, and estate and trust planning solutions.



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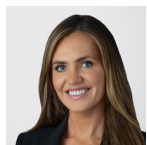
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