BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

TIME IS RUNNING OUT – THE FLORIDA FAMILY TRUST COMPANY CLOCK IS COUNTING DOWN

November 7, 2016

By: Colin M. Roopnarine

For Family Trust Companies contemplating or operating currently in Florida, pursuant to Section 662.1225, Florida Statutes, "A [family trust] company in operation as of October 1, 2016, which meets the definition of a family trust company, must, on or before December 30, 2016, apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed trust company, or **cease doing business in this state**." (Emphasis added). But how did we get here?

In 2014, while I was the General Counsel at the Florida Office of Financial Regulation ("OFR"), the Florida Legislature approved the "Florida Family Trust Company Act" which authorizes the OFR to, "…license family trust companies, to regulate persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and to establish the degree of regulatory oversight required of the Office of Financial Regulation over such companies." It was enacted in part to ensure that the fiduciary activities of a family trust company are restricted to family members and "related interests," as defined in the Florida Statutes. However, family trust companies and foreign licensed family trust companies are not required to be "licensed." A few states currently have similar laws, and with the growth of family trusts, and the willingness of new and existing trusts to relocate to Florida, there was a need that was recognized and had to be addressed. In addition, it is expected that as a result of the legislation, high net worth families not located in Florida may select Florida in which to establish family trust companies.

The legislation, effective on October 1, 2015, was a monumental task that involved meetings with the OFR and interested parties (the Real Property, Probate, and Trust Law Section of the Florida Bar was particularly instrumental throughout the process) who worked collaboratively for almost two years, and which resulted in the creation of an entirely new chapter in the Florida Statutes.

It is a "self-contained" chapter that applies only to family trust companies so long as they limit their operations solely to the parameters outlined in the chapter, and to which the remaining sections of the Florida Financial Institutions Codes are not applicable, and applies equally to foreign licensed family trust companies, family trust companies that are not yet licensed.

The statute creates licensed family trust companies, (registered) family trust companies and foreign licensed family trust companies for which there are many criteria, along with varying fees, for set-up and operation. For example,

- A "licensed" family trust company operates under the statute, and can operate for only one family, while a "(registered) family trust company" may serve as a fiduciary for up to 35 people who are not family members, and along with other requirements, may serve as a fiduciary for one or more family members;
- A foreign licensed family trust company must be licensed in a state other than Florida, with a principal place of business within the jurisdiction of the United States operating in accordance with family or private trust company laws of that jurisdiction, and subject to the supervision of that state, and must register with the OFR prior to beginning operations in Florida;

- Must have at least three directors or managers, one of whom must be a Florida resident;
- There are minimum capital requirements unique to each of the three possible family trusts; and,
- Family trust companies cannot perform the services authorized under this statute for the general public nor can they advertise their services to the general public, or operate as a banking institution.

In addition, comprehensive rules were promulgated to aid the OFR in its oversight of family trusts, the content of which requires experienced navigation.

The statute requires a family trust company to file an application with the OFR and describe in detail how the proposed family trust company will maintain accurate corporate and fiduciary services records. As part of the approval process, the OFR must investigate whether the members of a board of directors or officers, or managers are fit to serve in that capacity. Licenses and registrations must be renewed annually, and the Legislature charged the OFR with regularly examining all family trusts to determine whether they are operating in compliance with the statutes and rules, for which failure can bring legal consequences.

These are a few of the many convoluted and detailed requirements imposed on family trusts by the statute, compliance with which is vital for a private family trust that is, or may become engaged in activities in the State of Florida. And to top it all – the December 30 deadline is almost here, and as the statute states: "A [family trust] company in operation as of October 1, 2016, …must, on or before December 30, 2016, apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed trust company, or **cease doing business in this state**." (Emphasis added). The timing is key because pursuant to the rules, in addition to submitting up to 17 separate attachment exhibits, the OFR can require the submission of additional information which must be supplied 60 days after the request is made, and no application is deemed complete unless and until all additional information has been submitted. The clock is ticking… .

For more information on this topic, please contact the author, Colin Roopnarine, on the firm's Government and Regulatory team.

Related Practices

Banking & Financial Services Litigation

Related Practice Teams

Government and Regulatory

Related Team Member(s)

Colin M. Roopnarine