

TC23 ~~Application Procedures for Private Family Trust Company Charter~~
~~[Section 11-109-1003, C.R.S.]~~

~~A. Purpose~~

~~To set forth a procedure under which an individual or related family group may apply for a private family trust company charter and request Banking Board approval of certain exemptions as identified under Banking Board Rule TC24.~~

~~B. Definitions: For the purpose of this Rule, the definitions set forth in Section 11-109-1001, C.R.S., shall be applicable.~~

~~C. Procedure for application for private family trust company charter~~

~~1. An individual incorporator, or two or more incorporators who are "family members" as that term is defined at Section 11-109-1001(3), C.R.S., desiring to organize a private family trust company shall file an application with the Banking Board signed by each of the incorporators, sworn to before a notary, officer, or other official recognized by the laws of this state or under federal law as having the power to administer oaths or witness and attest to execution. The application shall contain the following information in addition to any other information as may be required pursuant to Section 11-109-305, C.R.S., including the form of application prescribed by the Commissioner. Such application shall include at a minimum:~~

~~a. A nonrefundable application fee equal to one half of the amount set by the Banking Board pursuant to Section 11-102-104(11), C.R.S., for a de novo trust company application;~~

~~b. The proposed name of the private family trust company, which shall not be the same or deceptively similar to an existing trust company, and must include the words "private" and "family";~~

~~c. The street mailing address and telephone number of the physical location in this state at which the applicant will maintain its financial records;~~

~~d. The names, addresses, places of residence, and principal occupations of the incorporators and the stockholders initially subscribing to purchase the capital stock of the applicant and the number of shares subscribed by each initial subscriber;~~

~~e. The names, principal occupations, addresses, places of residence, and business and professional experience of all proposed officers, including the officer designated as managing officer for the applicant;~~

~~f. The number of members on the board of directors and the names, principal occupations, addresses, places of residence, and business and professional experience of the applicant's initial board members;~~

~~g. Financial and biographical statements on a form prescribed by the Commissioner that contain sufficient detail to substantiate the background and net worth for each director, officer, and controlling person;~~

~~h. Evidence that capital stock has been fully subscribed and the incorporator(s) has paid in full in cash for stock having a par value of not less than \$5,000;~~

- ~~i. If the applicant is an existing corporation or limited liability company, the company's financial statements as of the most recent calendar quarter, and the most recent calendar or fiscal year end;~~
 - ~~j. A description of the trust services the private family trust company will provide to family members;~~
 - ~~k. A business plan pro forma statement containing a three-year projected comparative balance sheet, income statement and statement of cash flows, showing projections of income, costs, profits and cash flows;~~
 - ~~l. The proposed articles of incorporation;~~
 - ~~m. A list of requested exemptions, which the Banking Board may consider pursuant to Banking Board Rule TC24, along with a statement as to the reason for each exemption requested; and,~~
 - ~~n. An attestation signed by each of the incorporators, sworn to before a notary, officer, or other official recognized by the laws of this state or under federal law as having the power to administer oaths or witness, asserting that:
 - ~~i. The application is not currently transacting business with the general public;~~
 - ~~ii. Will not transact business with the general public;~~
 - ~~iii. Will not market or advertise in any way and will not hold itself out as providing services to any persons other than family members, and,~~
 - ~~iv. Will provide services, directly, or indirectly, only to family members.~~~~
- ~~D. The Banking Board shall publish notice and conduct a hearing in accordance with the procedures for granting a trust company charter pursuant to Section 11-109-306, C.R.S.~~
- ~~E. The private family trust company may begin conducting business after receiving approval of the Banking Board in accordance with procedures outlined in this Rule, and has demonstrated to the satisfaction of the Commissioner, that it does not, and will not, transact business with the general public, and will operate in full compliance with the statutes and Banking Board rules, from which an exemption has not been granted.~~

~~TC24~~ ~~Private Family Trust Company Exemptions~~ [Section 11-109-1003(1), C.R.S.]

~~A.~~ Purpose

~~To identify those provisions of title 11 Article 109, and Banking Board rules applicable to trust companies from which a private family trust company, or person desiring to organize a private family trust company may request exemption. The Banking Board may, in its sole discretion, deny, modify, or conditionally approve any such requests for exemption. All exemptions granted by the Banking Board will be subject to the private family trust company fully complying at all times with the requirements of Section 11-109-1002, C.R.S., and not engaging in any of the prohibited transactions specified in the referenced statute.~~

~~B.~~ Definitions: For the purpose of this Rule, the definitions set forth in Section 11-109-1001, C.R.S., shall be applicable.

~~C.~~ Exemptions that may be requested in whole or in part

~~1.~~ An applicant for private family trust company charter may request a full or limited exemption from the following statutory requirements, subject to any limitations set forth below, or as determined by the Banking Board;

~~a.~~ ~~11-109-301. Incorporators: An application filed with the Banking Board to organize a private family trust company may be submitted by one or more incorporators.~~

~~b.~~ ~~11-109-303. Assessments~~

~~c.~~ ~~Report to the banking board and to the Commissioner: An applicant may request exemption from the filing of an annual audit or directors examination under paragraph 2, and the filing of quarterly reports required under paragraph 4(a) of the referenced section. Notwithstanding exemptions granted under this Rule:~~

~~i.~~ ~~All financial statements of the private trust company must be prepared in accordance with generally accepted accounting principals;~~

~~ii.~~ ~~An annual report according to a form prescribed by the Commissioner and verified in accordance with the requirement of paragraph (4)(a) of the referenced section shall be filed; and,~~

~~iii.~~ ~~The private family trust company shall annually file a certification with the Division of Banking confirming that the company is complying with all orders of the Commissioner and Banking Board, the provisions of title 11 article 109, except for those provisions for which an exemption has been granted, and is not conducting business with the general public.~~

~~d.~~ ~~11-109-501. Directors' meetings — duties: A private family trust company may request an exemption from the meeting frequency specified in paragraph 1, of the referenced section, but such meeting must be held at least annually, and no exemption from paragraphs 2 or 3 of the referenced section will be granted.~~

~~e.~~ ~~11-109-502. Director and officer insurance and fidelity bonds — legislative declaration~~

~~2. An applicant for private family trust company charter may request a full or limited exemption from the following Banking Board rules, subject to any limitations set forth below, or as determined by the Banking Board.~~

~~a. TC8 Dividend: A private family trust company may request an exemption from the dividend restrictions set forth in Banking Board Rule TC8; however, no dividend may be declared and paid that would reduce capital of the private family trust company below the minimum level required by Banking Board Rule TC13.5, or such lower amount approved by the Banking Board under Paragraph C(2)(d) of this Rule.~~

~~b. TC9 Investment Limitations~~

~~c. TC11 Scope of Directors' Examinations: A private family trust company may request an exemption from, or a modification of, the scope of a directors examination.~~

~~d. TC13.5 Minimum Capital Ratios for Non-Depository Trust Companies: A private family trust company may request a reduction in the minimum initial capital requirement and minimum capital requirements set forth in Banking Board Rule TC13.5; however, the Banking Board shall not approve a minimum capital requirement of less than \$150,000. Any reduction in the minimum capital requirement approved by the Banking Board shall be subject to review by the Commissioner no less than annually. Such review shall consider the adequacy of the reduced capital requirement based on the size, complexity, and condition of the private family trust company. If the Commissioner determines that a higher minimum capital requirement is necessary, he or she shall provide a findings report to the Banking Board and notify the private family trust company. The Banking Board shall hold a public hearing within three months of the date notice was given to the private family trust company, at which hearing the Banking Board may revoke, modify or affirm the exemption.~~

~~e. TC16 Insurance: A private family trust company shall at all times maintain a surety bond or fiduciary errors and omissions insurance policy as required by Banking Board Rule TC16, but at such lesser amount as may be approved by the Banking Board.~~

~~f. TC19 Investment in a Subsidiary~~

~~g. TC20 Reports of Condition and Income (Call Report) Filing Requirement: A private family trust company may request an exemption from Banking Board Rule TC20, subject to the limitations set forth in paragraph C(1)(c) of this Rule.~~

~~h. Fiduciary Self-Dealing~~

~~D. Subsequent Requests for Exemption~~

~~No earlier than one year following the Banking Board approval of a private family trust company charter, the company may apply for an exemption that was not requested at the time the application was submitted, or reapply for an exemption that was either not approved, or the exemption request was modified by the Banking Board at the time of approval. A private family trust company may apply at any time for an exemption from a provision of title 11, Article 109, or a Banking Board rule that was enacted, promulgated, or amended following the date of the Banking Board approval of the charter application.~~

~~TC25~~ ~~Revocation of Exemption~~ [Section 11-109-1006, C.R.S.]

~~A.~~ ~~Purpose~~

~~To identify circumstances under which an exemption granted by the Banking Board pursuant to Section 11-109-1003, C.R.S., and Banking Board Rule TC24 may be revoked, and outline the process for such revocation.~~

~~B.~~ ~~Definitions: For the purpose of this Rule, the definitions set forth in Section 11-109-1001, C.R.S., shall be applicable.~~

~~C.~~ ~~Grounds for revocation~~

~~1. The Banking Board may revoke an exemption granted pursuant to Section 11-109-1003, C.R.S., and Banking Board Rules TC23 and TC24 if the Banking Board finds that the private family trust company or any director, executive officer, or controlling shareholder has:~~

- ~~a. Made a false statement on any document required to be filed pursuant to title 11, articles 101 thru 109, or any rule promulgated by the Banking Board;~~
- ~~b. Withheld information from the Banking Board or Commissioner;~~
- ~~c. Failed to comply with an order of the Banking Board or Commissioner;~~
- ~~d. Committed any act, or been involved in any activity that would have been grounds for denial of the private trust company charter application or the requested exemption;~~
- ~~e. Failed to cooperate with an investigation or examination initiated by the Division of Banking, or the Banking Board pursuant to title 11, articles 101 thru 109;~~
- ~~f. Violated any provision of title 11, articles 101 thru 109, or any rule promulgated by the Banking Board for which the Private Trust Company does not have an exemption;~~
- ~~g. Become insolvent in that the private family trust company has ceased to pay its debts in the ordinary course of business, is unable to pay debts as they come due, or has liabilities that exceeds its assets; or,~~
- ~~h. Operated in a manner that is unsafe or unsound.~~

~~D.~~ ~~Notice of revocation and process for hearing~~

- ~~1. If the Banking Board resolves to revoke an exemption, a written notice of the proposed revocation shall be provided to the private family trust company, along with a description of the reason or reasons for the revocation.~~
- ~~2. The revocation shall become effective ten calendar days after delivery of the notice to the private family trust company or such later time as specified by the Banking Board, unless the company requests a hearing prior to the effective date. If such hearing is requested in a timely manner, the Banking Board shall:~~

- a. ~~Schedule a public hearing on the issues within thirty calendar days of receipt of the request;~~
- b. ~~At the hearing, the Commissioner or his or her designee will describe and support the basis for the revocation;~~
- c. ~~The private family trust company will be given an opportunity to refute the Commissioner's findings, and state the reason, or reasons why the exemptions should not be revoked;~~
- d. ~~At the conclusion of the hearing, the Banking Board will uphold or withdraw the revocation.~~

E. ~~Effect of revocation~~

1. ~~If the Banking Board upholds the revocation following a hearing under subparagraph C(2) of this Rule, the effective date of the revocation will be ten calendar days following the hearing.~~
2. ~~Upon revocation of an exemption granted by the Banking Board pursuant to Banking Board Rules TC23 and TC24, the private trust company shall immediately, or within such time as the Banking Board approves, comply with the rule or provision from which it had been granted an exemption, or:~~
 - a. ~~Cease conducting a trust company business and submit an application pursuant to Section 11-109-701, C.R.S., to voluntarily liquidate and dissolve the company; or;~~
 - b. ~~Cease conducting a trust company business and apply to the Banking Board to convert to a public trust company in accordance with the procedures set forth under Banking Board Rule TC26.~~
3. ~~If a private trust company is unwilling, or unable to comply with Paragraph D(2) of this Rule, the Banking Board shall take possession of the company and involuntarily liquidate it pursuant to Section 11-109-702, C.R.S.~~

TC26 ~~Conversion of a Private Family Trust Company to a Public Trust Company~~ [Section 11-109-1007, C.R.S.]

~~A. Purpose~~

~~To set forth a procedure under which a trust company may terminate its status as a private family trust company and begin transacting business with the general public.~~

~~B. Definitions: For the purpose of this Rule, the definitions set forth in Section 11-109-1001, C.R.S., shall be applicable.~~

~~C. Procedure for conversion to a public trust company~~

~~1. A private family trust company desiring to conduct business with the general public shall submit an application to the Banking Board signed by each of the incorporators, sworn to before a notary, officer, or other official recognized by the laws of this state or under federal law as having the power to administer oaths or witness and attest to execution, and the application shall contain the following information, in addition to any other information as may be required pursuant to Section 11-109-305, C.R.S., including the form of application prescribed by the Commissioner. Such application shall include at a minimum:~~

~~a. A schedule of all exemptions previously granted to the private trust company under Banking Board Rules TC23 and TC24, along with a detailed strategy and timeframe for achieving compliance with those provisions and rules for which an exemption had been granted;~~

~~b. The names, addresses, places of residence, and principal occupations of all stockholders who will hold five percent or more of outstanding stock of the trust company;~~

~~c. The names, principal occupations, addresses, places of residence, and business and professional experience of all current and proposed officers, including the officer designated as managing officer for the applicant;~~

~~d. The number of members on the board of directors and the names, principal occupations, addresses, places of residence, and business and professional experience of the current and proposed board members;~~

~~e. Financial and biographical statements on a form provided by the Commissioner that contain sufficient detail to substantiate the background and net worth of each officer, director and controlling person;~~

~~f. Evidence that any additional capital stock has been fully subscribed;~~

~~g. A business plan pro forma statement containing at a minimum:~~

~~i. A three-year projected comparative balance sheet, income statement and statement of cash flows, showing projections of income, costs, profits and cash flows;~~

~~ii. A three-year estimate of the volume of fiduciary assets, with an explanation of the applicant's reasons for believing it will develop such volume of business; and,~~

~~TC27~~ ~~Change of Control of a Private Family Trust Company~~ [Section 11-109-1007, C.R.S.]

~~A. Purpose~~

~~To clarify private family trust company ownership transfer requirements and set forth notice and application procedures for permissible ownership transfers.~~

~~B. Definitions: For the purpose of this Rule, the definitions set forth in Section 11-109-1001, C.R.S., shall be applicable.~~

~~C. Change of control notice~~

~~1. Any person owning twenty-five percent or more of a private family trust company who desires to transfer ownership interests to another person to whom he or she is related within the second degree of affinity or consanguinity, shall provide the following information to the Division of Banking:~~

~~a. Written notice of the proposed change at least thirty calendar days prior to any such transfer;~~

~~b. The name, address, place of residence, and principal occupation of the related family member(s) who will buy or otherwise acquire the ownership interest;~~

~~c. A description of the familial relationship between the transferring party and the recipient(s).~~

~~d. Financial and biographical statements on a form provided by the Commissioner containing sufficient detail to substantiate the background and net worth of any recipient of the transfer whose ownership interest in the company will exceed twenty-five percent after the transaction is consummated; and,~~

~~e. A pro forma stock register for the company with the names, addresses, principal places of business, and principal occupations of all shareholders who will own five percent or more of the company following the transfer.~~

~~2. Banking Board approval is not required and any exemption previously granted pursuant to Section 11-109-1003, C.R.S., shall remain effective for any stock transfers that comply with the requirements and limitations of paragraph C of this Rule.~~

~~D. Change of control application~~

~~1. Any person owning twenty-five percent or more of a private family trust company who desires to transfer ownership interests to another person to whom he or she is not related within the second degree of affinity or consanguinity, but is related within the fourth degree of affinity or consanguinity, and whose ownership interest would exceed twenty-five percent upon consummation of the transfer, shall provide the following information to the Division of Banking:~~

~~a. Written notice, signed by all members of the board of directors, of the proposed change at least sixty calendar days prior to any such transfer;~~

~~b. The name, address, place of residence, and principal occupation of the related family member(s) who will buy or otherwise acquire the ownership interest;~~

- ~~c. A description of the familial relationship between the transferring party and the recipient(s).~~
 - ~~d. Financial and biographical statements on a form provided by the Commissioner containing sufficient detail to substantiate the net worth and background of any recipient of the transfer whose ownership interest in the company will exceed twenty-five percent after the transaction is consummated; and,~~
 - ~~e. A written acknowledgment, signed by all members of the board of directors, that any exemptions granted pursuant to Section 11-109-1003, C.R.S., shall be revoked upon the date of the transfer, unless prior approval of the Banking Board has been obtained in accordance with Paragraph D(2) of this Rule.~~
- ~~2. Any transfer that meets the criteria set forth under Paragraph D(1) of this Rule shall result in the revocation of all exemptions previously granted pursuant to Section 11-109-1003, C.R.S., upon the effective date of the transfer, unless an application for continuation of the exemptions has been submitted to the Banking Board and approval obtained in accordance with Banking Board Rule TC23 prior to the date of transfer. If a transfer occurs without notice to the Banking Board, or Banking Board approval to retain the exemptions is not obtained, the revocation procedures set forth under Banking Board Rule TC25 shall be followed.~~
- ~~E. Any transfer of an ownership interest in a private family trust company to a person who is not a "family member" as that term is defined at Section 11-109-1001(3), C.R.S., is prohibited and will result in the revocation of all exemptions. In addition, the Banking Board may seek enforcement action as deemed appropriate, up to and including revocation of the charter.~~