WEST VIRGINIA CODE: §31I-1-3

§31I-1-3. Definitions.

As used in this article, unless the context requires a different meaning:

(1) "Applicant" means the corporation or limited liability company on whose behalf an application for a license to operate as a licensed private trust company is submitted under §31I-1-4(e) of this code.

(2) "Capital account" means the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus and undivided profits or retained earnings of a private trust company organized as a corporation; or the initial cash investment remitted for membership interests in a private trust company organized as a limited liability company, plus any undivided profits or retained earnings of the limited liability company.

(3) "Capital stock" means the shares of stock issued to create nonwithdrawable capital for a corporation, or membership interests issued to create nonwithdrawable capital for a limited liability company.

(4) "Collateral kinship" means a relationship that is not lineal but derives from a common ancestor.

(5) "Degrees of kinship" means, with respect to two persons:

(A) Degrees of lineal kinship computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins; and

(B) Degrees of collateral kinship computed by commencing with one of the persons and ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

(6) "Designated relative" means a common ancestor of a family, who may be a living or deceased person, who is the individual to or through whom the family members are related, and who is so designated in the application for a license.

(7) "Family" means a designated relative and family members of that designated relative.

(8) "Family affiliate" means a company or other entity in which one or more family members own, control, or have the power, directly or indirectly, to vote all of the capital stock, partnership interests, membership interests, or other equity interests of the entity.

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(9) "Family member" means a designated relative and:

(A) Any individual within: (i) the fifth degree of lineal kinship to a designated relative of a private trust company, or the sixth degree of lineal kinship to a designated relative of a licensed private trust company, or (ii) the seventh degree of collateral kinship to a designated relative of a private trust company, or the ninth degree of collateral kinship to a designated relative of a licensed private trust company;

(B) The present or past spouse of any individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to such spouse or former spouse;

(C) A trust established by: (i) a family member if the trust is funded exclusively by one or more family members and, for these purposes, a trust to which property has been transferred as a result of a family member's exercise of a power of appointment shall be considered established by that family member if all qualified beneficiaries of the appointee trust are family members, or (ii) an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members, except that a trust composed exclusively of nonindividual qualified beneficiaries is considered to be a family member if all of the nonindividual qualified beneficiaries are charitable foundations or other charitable entities as described in paragraph (F) of this subdivision;

(D) A family affiliate or officer or former officer of a family affiliate: *Provided*, That in the case of a former officer, such officer must have qualified as an officer of the family affiliate at any time within the past three years;

(E) The estate of a family member or the estate of an individual who is not a family member if all of the noncharitable beneficiaries of such estate are family members, except that an estate composed exclusively of nonindividual beneficiaries is considered to be a family member if all of the nonindividual beneficiaries are charitable foundations or other charitable entities as described in paragraph (F) of this subdivision; or

(F) A charitable foundation or other charitable entity that either: (i) was created by a family member, or (ii) has a governing body consisting mostly of family members.

(10) "Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

(11) "Licensed private trust company" means a private trust company that operates in accordance with this article and has been issued a license that has not been revoked or suspended by the State Auditor.

(12) "Lineal kinship" means a family member who is in the direct line of ascent or descent from a designated relative.

(13) "Officer" of a family affiliate means an individual, regardless of whether the individual has an official title or receives a salary or other compensation, who may participate in the

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major policymaking functions of a family affiliate, other than as a director. The term does not include an individual who may have an official title and exercise discretion in the performance of duties and functions, but who does not participate in determining the major policies of the family affiliate and whose decisions are limited by policy standards established by other officers, regardless of whether the policy standards have been adopted by the board of directors or other members of management. The chair of the board of directors, the president, the chief officer, the chief financial officer, the senior trust officer, and all executive vice presidents of a family affiliate, and all managers if organized as a limited liability company, are presumed to be officers unless such officer is excluded by resolution of the board of directors or members or by the bylaws or operating agreement of the family affiliate, other than in the capacity of a director, from participating in major policymaking functions of the family affiliate, and such excluded officer does not actually participate therein.

(14) "Operating plan" means a plan that establishes the policies and procedures a private trust company will have in effect when the institution opens for business and thereafter:

(A) To ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct; and

(B) To assure compliance with applicable laws and regulations.

(15) "Private trust business" means acting as or performing the duties of a fiduciary in the regular course of its business for family members. A person does not engage in private trust business by:

(A) Rendering services as an attorney-at-law in the performance of duties as a fiduciary;

(B) Rendering services as a certified or registered public accountant in the performance of duties as such;

(C) Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(D) Acting as a trustee in bankruptcy or as a receiver;

(E) Holding trusts of real estate for the primary purpose of subdivision, development, or sale, or to facilitate any business transaction with respect to such real estate;

(F) Engaging in the business of an escrow agent;

(G) Holding assets as trustee of a trust created for charitable purposes if:

(i) The trustee is an entity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; and

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(ii) The trust is: (I) exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, (II) a charitable remainder trust described in Section 664 of the Internal Revenue Code, (III) a pooled income fund described in Section 642(c)(5) of the Internal Revenue Code, or (IV) a trust the charitable interest in which is either a guaranteed annuity or a fixed percentage distributed yearly of the fair market value of the trust property, described in Section 2055(e)(2)(B) or Section 2522(c)(2)(B) of the Internal Revenue Code;

(H) Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal; or

(I) Engaging in securities transactions as a broker-dealer or salesman.

(16) "Private trust company" means a corporation or limited liability company that:

(A) Is exclusively owned by one or more family members;

(B) Is organized or qualified to do business in this state;

(C) Engages or proposes to engage in private trust business under this article with one or more family members;

(D) Does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the private trust company or one or more trusts, companies, or other entities that are family members; and

(E) Does not transact business with the general public.

(17) "Qualified beneficiary" has the meaning provided in §44D-1-103(r) of this code.

(18) "State Auditor" means the West Virginia State Auditor.

(19) "Tax" includes, but is not limited to, federal, state, or local income, gift, estate, generation-skipping transfer, or inheritance tax.

(20) "Trust institution" means a bank or trust company chartered by a state bank supervisory agency or by the Office of the Comptroller of Currency.

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