

# Appropriate Naming Conventions for Wyoming Unregulated Private Trust Companies

By Christopher M. Reimer

Wyoming attorneys should take note that a Wyoming Private Trust Company cannot use the phrase “Trust Company” in its name, but may use the phrase “Single Family Private Trust Company” in its name. Otherwise, such an entity may use the terms “Trust” or “Company” in its name if the terms are not used in conjunction with each other.

A Private Trust Company (PTC) is an entity that provides trust and fiduciary services to a single family. PTCs have become very popular estate planning tools for moderately to very wealthy families because of the benefits that they offer for the management, preservation, consolidation, and investment of family-owned assets. PTCs also simplify the problem of trustee succession by enabling a form of financial parenting in which the family gradually introduces younger generations to the responsibility of managing the family’s assets. It has become common for families to create and appoint a PTC to act as trustee for irrevocable trusts that hold family wealth. Often, a PTC can provide the kind of flexible and knowledgeable fiduciary services that would be unavailable from a traditional corporate fiduciary.

Along with other trust law innovations, several states have sought to become more competitive in the interstate trust situs market by adopting favorable PTC legislation.<sup>1</sup> Wyoming has received a large amount of national and international notoriety for the attractive features of its trust laws.<sup>2</sup> Such features include the availability of uniquely flexible, unregulated PTCs.<sup>3</sup> While several states permit families to create lightly regulated PTCs, only Wyoming and Nevada allow truly unregulated PTCs.<sup>4</sup> Such entities can be established and operated more quickly and less expensively than chartered trust companies.<sup>5</sup>

Wyoming law generally requires companies that provide trust business to the public to obtain a charter from and be subject to regulation by the State Banking Commissioner.<sup>6</sup> The legislature has defined “trust business” as the following:

[T]he holding out by a person to the public at large by advertising, solicitation or other means that such person is available to act as an executor, administrator, guardian, conservator or trustee in this state and accepting and undertaking to perform the duties in such a capacity in the regular course of his business.<sup>7</sup>

Recently there has been a notable increase in the number of family PTCs formed in Wyoming. While Wyoming law does not require such PTCs to obtain a charter from the Commissioner, they cannot hold themselves forth to the public as engaging in trust business, whether through advertising, solicitation, or other means.

Wyoming statutes restrict the permissible names of entities that need not receive a charter from the Commissioner:

No person or entity shall advertise, issue or circulate any paper or exhibit any sign using any of the terms “bank”, “banker”, “banking”, or words of similar import, or use the name of any other financial institution as defined by W.S. 13-1-101(a)(ix) until they have fully complied with this act.<sup>8</sup>

The legislature’s use of the phrase “or words of similar import” suggests the existence of phrases other than “bank,” “banker,” or “banking” that unregulated PTCs cannot use in their advertising, papers, and

signs. The Division’s current interpretation of this statute is that such language includes the phrase “Trust Company.”

The Division’s rationale for this interpretation derives from the Wyoming Legislature’s use of the phrase “Trust Companies” as the title of Chapter 5 of Title 13 of the Wyoming Statutes Annotated, which governs the creation and regulation of trust companies, and language throughout Chapter 5 that discusses “trust companies” as regulated entities.<sup>9</sup> The phrase “Trust Company” may convey to the public that an unregulated PTC provides trust services to the public at large. Representations to that effect could negate the reasoning for not requiring PTCs to register with the Commissioner: the fact that they do not provide trust services to the public and, therefore, do not engage in “trust business” for the purpose of the state’s banking statutes.

As such, the Division has determined that an unregulated PTC cannot use the phrase “Trust Company” in its name. The Division will provide an exception for unregulated PTC names that include the phrase “Single Family Private Trust Company.” Otherwise, unregulated PTCs may use either the terms “Trust” or “Company” in their names, but may not use those terms in conjunction with each other.\*

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### ENDNOTES

1. Alan V. Ytterberg & James P. Weller, *Managing Family Wealth through a Private Trust Company*, 36 ACTEC L.J. 623 (2010).
2. Daniel G. Worthington & Mark Merric, *Which Situs is Best?*, TR. & EST., Jan. 1, 2010, at 54.
3. See Christopher M. Reimer, *The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction*, 11 WYO. L. REV. 165 (2011) for a more thorough discussion of Wyoming PTCs and the interstate competition for trust business.
4. See WYO. STAT. ANN. §§ 13-5-101 to -104; NEV. REV. STAT. § 669.080(1)(o).
5. Reimer, supra note 3, at 189.
6. WYO. STAT. ANN. § 13-5-101(f).
7. WYO. STAT. ANN. § 13-1-101(a)(xv).
8. WYO. STAT. ANN. § 13-1-204 (emphasis added).
9. WYO. STAT. ANN. §§ 13-5-101 to -113.

## Mitigating the Legal Risks of Using SOCIAL MEDIA

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- Avoid controversial subjects
- Use a polite and respectful tone, even when disagreeing
- Never post anything that could conceivably be construed as discrimination, harassment, or defamation

The policy should limit who has the authority to speak on the organization's behalf. To effect such a strategy, consider:

- Banning those individuals not authorized to speak for the organization from using any of its intellectual property (e.g., logos, trademarks, and copyrights) in any manner
- Forbidding the use of the organization's name in particular forms (e.g., username and screen name), but perhaps specifically allowing it as part of the employee's profile so long as the information remains current

The essence of a good policy is simple: "Don't be stupid." While many more words are perhaps advisable for the sake of clarity, that's what it all boils down to.

### Provide Strong Consequences, Make Them Clear

Any good policy must have teeth. There must be a clear statement providing that any misuse of social media by employees can be grounds for discipline, up to and including termination. In addition, employees should be required to attend regular training and meetings to ensure they remain current on any new changes in the policy, as well as new developments regarding changes in the social media sites themselves. If changes in the policy are required, it might be a good idea to send an organization-wide e-mail highlighting the changes and announcing any upcoming training sessions.

### Impose Technology Controls

Organizations should also consider whether or not to impose technological controls on social media usage. The key words are "try to im-

pose" because the advent of smartphones has made control difficult, if not impossible, to achieve. Even if the organization-owned smartphones are controlled, many employees have personal smartphones, as well. Organizations have learned, to their chagrin, that their employees are adept at making end-runs around technological barriers.

Many companies do forbid the use of social media at work, generally using hardware or software to block common social media sites. For those organization-owned smartphones that are sophisticated enough for advanced security measures to be taken, access to social media sites can also be banned.

However, most organizations are embracing the use of social media at least to some extent. Even where social media use is permitted, many companies will use hardware or software to monitor usage. Without question, social media usage can be the mother of all productivity drains. It has been the experience of Sprint and Coca-Cola, whose ardent embrace of social media was mentioned earlier, that those who abuse social media are generally known to their colleagues. Nevertheless, many employers are aghast when they are shown data gathered with specialized hardware and software tracking employee usage of social media.

### Balance Social Media Potential Against Risks

Facebook, Twitter, YouTube, and their social media brethren have been in use for only a few years, and yet they have revolutionized business marketing and customer relations. This is very much a revolution in progress, and each year brings new technologies, new regulatory requirements, and new court decisions important to individuals who manage social media usage within their organization.

Social media sings a sweet siren song indeed, and yet it can morph in an instant into Pandora's Box. Success with social media, while limiting risk, requires constant vigilance. \*

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