

FREQUENTLY ASKED QUESTIONS

1. Am I exempt from the Trust Institutions Modernization Act (TIMA)?

In order to determine if a person or entity is exempt from TIMA, elements of Title 11 and Title 30B must be reviewed. A person or entity that is operating under the provisions of RCW 11.36.021, *but* does not qualify for one of the exemptions under RCW 30B.04.040, may need to register with the Division of Banks (Division). A Determination Interview may need to be scheduled in order to determine whether you or your company is exempt.

Definition of Trustee under Title 11 RCW

Trust laws applicable to all persons and entities in Washington State are housed under Title 11. Under RCW 11.36.021, the following persons and entities may legally serve as a trustee:

- Persons over the age of eighteen years;
- Nonprofit corporations registered under Title 24 RCW;
- Attorneys that are organized as a professional service corporation, professional limited liability company, or limited liability partnerships;
- Higher education institutions and foundations as defined by RCW 28B.10.016 and RCW 28B.50.030; and
- Any other entity authorized under the laws of the State of Washington to serve as a trustee.

Also, under RCW 11.36.021, the following persons are *prohibited* from serving as a trustee in Washington: Minors, convicted felons, and unauthorized corporations organized under Title 23B RCW.

Exemptions under the New Title 30B RCW

Under RCW 30B.04.040, the following persons or entities are exempt from registering with the Division as a trust company:

- Individuals or sole proprietors or general partnerships or joint ventures composed of individuals not deemed to be operating a trust business.
- National banks, federally chartered trust companies, federal savings banks, and federal savings and loan associations.
- An agent of a trust institution that is authorized by law (i.e., an investment advisor or property manager).
- Court appointed trustees, guardians, conservators, or receivers. (If a court is monitoring these relationships, the Division does not need to have overlapping jurisdiction.
- An attorney, law firm, or limited license legal technician authorized by law.
- Escrow agents performing escrow activities.

- Trustees for deeds of trust engaged in performing their responsibilities under the Washington Deed of Trust Act, Chapter 61.24 RCW.
- Real estate brokers and sales associates engaged in their authorized activities under Chapter 18.85 and 18.86 RCW.
- Broker - dealers and investment advisors rendering investment advice who are already registered with and regulated by the Division of Securities or the U.S. Securities and Exchange Commission, and who are performing activities authorized under applicable federal and state securities registration laws.
- Insurance company activities that are regulated by the Office of Insurance Commissioner.
- Voting trusts.
- Higher education and foundation trustee activity.
- Private trusts or private trust companies, as defined in RCW 30B.64.
- Other persons or entities, which the Director of the Division may, by future rule, exempt.

2. *What are the Division’s capital requirements?*

There are no minimum capital requirements under TIMA. Please be aware that capital requirements are determined by assessing several factors including the business model, the scope of the trust company operations, the current or proposed insurance and bonding levels, and loss history (if any). Refer to RCW 30B.08.050 for more information.

3. *What does it mean to be regulated?*

Generally, the Division examines new trust companies once a year for the first two years and every 18 months thereafter, unless more frequent reviews are deemed necessary. At the end of the examination, a report is issued, where confidential ratings are assigned to the company using the Uniform Interagency Trust Rating System. The Division requires the company to submit a quarterly “Call Report” to the Division, which is essentially a balance sheet and income statement.

4. *How much does it cost to be regulated?*

The Division charges an hourly rate for examinations and any application time spent. The current hourly rate is \$83 per hour. The Division also charges a semi-annual fee based on assets under management. A list of our fees can be found at WAC 208-544 et seq.

Cost estimates for a new trust company with approximately \$250 million under management would be as follows:

	Estimated Hours	Dollar Amount
Investigation	72	\$6,000
Year 1	80	\$6,400
Year 2	80	\$6,400
+18 Months (thereafter)	80	\$6,400
Semiannual assessment	2x a year due January 30 and July 31 st	\$125

5. What if I determine that I am running a trust business, but I do not want to register with the Division?

It is incumbent on the person or entity to make a showing that they are not engaged in “trust business” or that they meet a statutory exemption. If the Division determines that a person or company is engaged in unauthorized “trust business,” is deemed non-exempt, and is unwilling to register with the Division, the Director by and through the Washington State Attorney General may commence an enforcement action against the person or company.
