

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 3:30 p.m. on February 2, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Joyce Bishop, Committee Assistant

Conferees appearing before the committee:

Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association
Kathleen Taylor Olsen, Sr. Vice President, Kansas Banker's Association (written testimony)
Luke Bell, Vice President of Government Affairs, Kansas Association of Realtors
John Peterson on behalf of Chris St. John, Legislative Chairperson, Kansas Land Title Association
Doug Wareham, Sr. Vice President, Kansas Banker's Association
Lance Caldwell, Regional Director, Promontory Interfinancial Network, LLC

Others attending:

See attached list.

Chairperson Brown announced there would be a Financial Institutions Committee dinner next Monday at Teller's in Lawrence. Ron Gaches is the host for the evening.

Hearing on:

HB 2091 - Exempting modular homes from Kansas manufactured housing act.

Proponents:

Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association, presented testimony in support of **HB 2091** (Attachment 1)

Kathleen Taylor Olsen, Kansas Banker's Association submitted written testimony only in support of **HB 2091** (Attachment 2).

Chairperson Brown closed the hearing on **HB 2091**.

Hearing on:

HB 2092 - Prohibiting transfer fee covenants.

Proponents:

Luke Bell, Vice President of Government Affairs, Kansas Association of Realtors, presented testimony in support of **HB 2092**, (Attachment 3).

Kathleen Taylor Olsen, Kansas Banker's Association submitted written testimony only in support of **HB 2092** (Attachment 4).

John Petersen presented testimony on behalf of Chris St. John, Legislative Chair, Kansas Land Title Association in support of **HB 2092** (Attachment 5).

CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:30 p.m. on February 2, 2009, in Room 784 of the Docking State Office Building.

Chairperson Brown closed the hearing on **HB 2092**.

Doug Wareham, Sr. Vice President, Kansas Banker's Association, presented information regarding Public moneys, reciprocal deposit program (Attachment 6).

A bill regarding this topic was read on the House floor today and given the bill number **HB 2185**. It has been scheduled for hearing and possible action in committee on February 4th.

Lance Caldwell, Regional Director, Promontory Interfinancial Network, LLC presented written testimony in support of **HB 2185** (Attachment 7)

Chairperson Brown closed the hearing on **HB 2185**.

Chairperson Brown asked for a motion to approve the committee minutes from the January 26th & 28th meetings. Robert Olson made a motion to approve the minutes from January 26th & 28th. Nile Dillmore seconded the motion. The motion passed unanimously.

The next meeting is scheduled for February 4, 2009.

The meeting was adjourned at 4:25pm.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE

3:30pm,

Room 784, Docking State Office Building

GUEST LIST

DATE: February 2, 2009

NAME	REPRESENTING
Lance Caldwell	Promontory / CDARS
Maisha Jay Smith	KMHA
Doug Wareham	KBA
Rob Meach	KEANEY & Assoc.
Haley Daise	KLUA
Stuart Little	Community Bankers
Dennis McKinney	Treasurers Office
Tom Thull	Office of The State Bank Commissioner
Matt Casey	GBA
Scott Gates	State Treasurer's Office
Liz Miller	Pooled Money Inv. Board
Scott Millen	Pooled Money Inv. Board
Matthew Goddard	Heartland Community Bankers Assoc.
John C Peterson	Capital Strategies
Ron Gaches	GBA
Nathan Eberline	LKM
ERIK SARTORIUS	City of Overland Park



3521 SW 5th Street
Topeka, KS 66606
785-357-5256
785-357-5257 fax
kmha1@sbcglobal.net

TO: Representative Anthony Brown, Chairman
And Members of the Committee

FROM: Martha Neu Smith
Executive Director

DATE: February 2, 2009

RE: HB 2091 – Modular Housing

Chairman Brown and members of the Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment on HB 2091.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transport companies.

The association requested the introduction of HB 2091 to provide statutory clarification within the Kansas Manufactured Housing Act in light of a recent bankruptcy case that the Kansas Bankers Association brought to my attention. The bankruptcy case involved a lender, which had taken a mortgage on a **modular home** and the land it was attached to; the Bankruptcy Trustee tried unsuccessfully to argue that since the lender had not perfected its lien on the certificate of title that the lender had not properly perfected its lien according to the Kansas Manufactured Housing Act.

The Manufactured Housing Act (K.S.A. 58-4201 to 58-4227) was designed to provide state regulation of the mobile and manufactured housing industry and part of the regulation is the issuance of a certificate of title for these two forms of housing. This titling requirement is due to the fact that both mobile and manufactured housing have been engineered to be either an improvement to the real estate (on a permanent foundation & title surrendered K.S.A. 58-4214) or personal property.

The Kansas Manufactured Housing Act only mentions "modular home" within the definitions. As defined in the act, modular homes are built to local codes and must be on a permanent foundation (an improvement to the real estate). Modular homes are never considered personal property; consequently they are not issued a certificate of title.

In the end, we felt the Bankruptcy Court ruled correctly in judgment for the lender, but to forgo any future confusion we felt it would be good to clarify that the requirements of the Kansas Manufactured Housing Act do not apply to modular housing. The new language in HB 2091 only provides clarification but does not make any change to the current regulations of mobile or manufactured housing.

Thank you again for the opportunity to comment and we would respectfully request the Committee's support of HB 2091.

HOUSE FINANCIAL INSTITUTIONS
DATE: 2-2-2009
ATTACHMENT: 1



February 2, 2009

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2091: Modular Homes

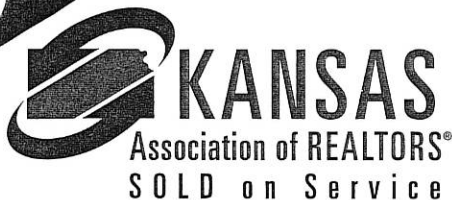
Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony in support of **HB 2091**, which amends K.S.A. 58-4203, by clarifying that modular homes are not subject to the Kansas Manufactured Housing Act.

The distinction between a modular home and a manufactured home is a very important one to the banking industry. Manufactured homes are issued a certificate of title. If the owner of a manufactured home does not surrender the title as provided in K.S.A. 58-4214, a lender must perfect its security interest in the manufactured home by having its lien noted on the title.

Modular homes are not issued a certificate of title. Lenders perfect their security interest on modular homes by filing a mortgage with the register of deeds. Not only should modular homes not fall under the scope of the Kansas Manufactured Housing Act, but it would be impossible to comply with many of the provisions due to the fact that a title is never issued for this type of home.

We support the effort to clarify this distinction. Thank you and we respectfully ask the Committee to act favorably on **HB 2091**.



To: House Financial Institutions Committee
From: Luke Bell, KAR Vice President of Governmental Affairs
Date: February 2, 2009
Subject: **HB 2092** – Prohibiting Private Transfer Fee Covenants in Kansas

Chairman Brown and members of the House Financial Institutions Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2092**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

Summary of the Legislation

HB 2092 would prohibit the use of private transfer fee covenants in Kansas. Private transfer fees are a relatively new scheme where the original owner of a property adds a covenant to the deed that requires all future owners of the property to pay a large “transfer fee” to the original owner of the property or a designated third party whenever they transfer ownership of the property.

Unless future owners of the property pay the large transfer fee to the original owner of the property, they will not be able to transfer marketable title to the property to another party, which means that potential buyers will not be able to obtain title insurance and mortgage financing. We believe that a private transfer fee covenant is essentially a sophisticated extortion scheme that robs a homeowner of the equity in his or her home by holding clear and marketable title to the property hostage.

This legislation would prohibit private transfer fee schemes by reinforcing existing Kansas common law prohibitions against unreasonable restraints on alienation and against covenants that do not “touch and concern” the land. If adopted, this statute would make these private transfer fee covenants unenforceable against future owners of the property, thereby preserving the marketability and transferability of real property in this state.



785.267.3610
VOICE

800.366.0069
TOLL FREE

785.267.1867
FAX

HOUSE FINANCIAL INSTITUTIONS
DATE: 2-2-2009
ATTACHMENT: 3-1

Overview of the Basic Private Transfer Fee Scheme

The private transfer fee scheme normally begins when the original owner of a property (hereinafter "original owner") records a restrictive covenant in the deed to his or her property. This restrictive covenant is recorded on a copyrighted form provided by a company (hereinafter "the company") headquartered in Texas that claims to have patented the basic private transfer fee scheme.

The actual text of this restrictive covenant requires all future owners of the property to pay the company a "transfer fee" whenever they sell or transfer the property. This transfer fee is normally specified in the restrictive covenant as 1.0% to 2.0% of the sales price or fair market value of the property at the time of the transfer. For example, the owner of a home valued at \$150,000 would have to pay a \$1,500 to \$3,000 transfer fee to the company upon any sale or transfer of that home.

In order to ensure that the owner does not refuse to pay the transfer fee at the closing table, the covenant also imposes a lien against the property in the amount of the transfer fee. At closing, the closing agent is instructed to collect and remit the fees to the company. In order for the transaction to proceed to closing, the owner of the property must consent to the payment of the transfer fee.

Once the transfer fee is remitted by the closing agent to the company, the company keeps 30% of the transfer fee as an administrative commission and sends the remaining 70% of the transfer fee to the original owner of the property or a designated third party. On occasion, a portion of the transfer fee is also sent to another party like a real estate broker or attorney who helped arrange the placement of the restrictive covenant in the deed to the property.

Fundamental Problems with Private Transfer Fee Schemes

As I stated earlier in this testimony, we believe that a private transfer fee covenant is essentially a sophisticated extortion scheme that robs a homeowner of the equity in his or her home by holding clear and marketable title to the property hostage. Unless future owners of the property pay the transfer fee, they will not be able to transfer marketable title to the property, which means that potential buyers will not be able to obtain the necessary title insurance and mortgage financing to purchase the property.

The private transfer fee covenant degrades the marketability of the title to the property and essentially reduces the fair market value of the property by the amount of the transfer fee. Prior to having knowledge of the transfer fee covenant, any potential buyers of the property assume that they are purchasing the full fee simple title to the property.

▪ **Private Transfer Fees Make the Property Unmarketable**

In situations where the deed is not encumbered by a transfer fee covenant, the purchase of the property entitles the buyer to a 100% interest in the value of any future appreciation of the property. However, in situations where there is a transfer fee covenant, the buyer of the property is forced to agree to surrender at least 1.0% to 2.0% of the future appreciation of the property.

Imagine you have purchased a property with a fair market value of \$100,000 that is not subject to a transfer fee covenant. In return for the payment of the purchase price of \$100,000, you now own a property that has a fair market value of \$100,000. If you choose to sell that home in the future, you can expect to receive the fair market value of that property (which should increase over time).

However, now imagine that you have purchased a similar property with a fair market value of \$100,000 that is subject to a transfer fee of 2.0%. If you choose to sell that home in the future, you will not receive the full fair market value for that property and will be forced to pay a \$2,000 transfer fee to the original property owner.

As a result, you have just paid \$100,000 for a property that is immediately worth 2.0% less than the price you paid for the property, which would be \$98,000. The private transfer fee covenant has stolen your equity in the home and you have not received the full fair market value of your purchase.

In these situations, the presence of the private transfer fee covenant makes it nearly impossible to market the property to potential buyers. Potential buyers are generally not interested in purchasing a property that is not worth the amount paid for the property.

In states where this practice is prevalent, these concerns have led to many failed transactions as buyers simply choose to walk away from the closing table and purchase an alternative property without a transfer fee covenant. The inclusion of the transfer fee covenant in the deed does in fact make the property nearly unmarketable.

▪ **Private Transfer Fees Prevent Buyers from Obtaining Title Insurance and Financing**

Finally, private transfer fee covenants can cause major defects to the title to the property. When a seller conveys a property through a warranty deed to a buyer, they are warranting that the deed does not contain any restrictions that will interfere with the buyer's future use and enjoyment of the property.

The entire real estate transaction process hinges on the sanctity and enforceability of the title to the property. If the title has defects, numerous other essential pieces of the real estate transaction will fail. In other states where this practice is more prevalent, mortgage lenders and title insurance agencies are not willing to participate in transactions where the title is affected by a private transfer fee covenant.

If a potential buyer is unable to obtain mortgage financing or title insurance on the property, this will render the property even more unmarketable. By imposing obstacles to the acquisition of mortgage financing and title insurance, private transfer fee covenants reduce the transferability and marketability of titles to real property.



February 3, 2009

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2092: Private Transfer Fee Covenants

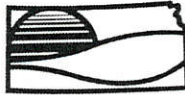
Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony on **HB 2092** which prohibits the practice of including private transfer fee covenants in real estate deeds. As you have already heard, this practice occurs when a party to a conveyance of land adds a covenant to the deed which attaches to the initial sale of the land and all future sales. The covenant provides for transfer fee – a percentage of the sales price to be delivered to the party involved in the initial sale.

This practice raises concern among the banking industry as it has the potential to create last-minute objections at the closing of a transaction. The buyer may not be aware of the fee until that moment and if he or she refuses to pay it, the closing will at the least, be postponed.

More importantly, there is the potential that such a covenant could cause problems with the title to the property. When financing the purchase of real estate, the lender financing the purchase for the buyer will want to assure that the seller is transferring fee simple title. If such a fee is attached to the real estate, the seller is not transferring fee simple title but something less. In essence, the seller has failed to live up to his or her promise under the contract. This could jeopardize the ability of the buyer to obtain title insurance, which would in turn, jeopardize the buyer's ability to find financing.

It is for these reasons that we support the effort to prohibit the practice of including private transfer fee covenants in real estate deeds. Thank you and we would respectfully request that the committee act favorably on **HB 2092**.



KANSAS LAND TITLE ASSOCIATION

7321 N.W. Rochester Rd., Topeka, Kansas 66617

WWW.KLTA.ORG

January 29, 2009

To: Chairman Anthony Brown
House Committee on Financial Institutions
Feb 3, 2009 Hearing
From: Chris St. John, Chairman Legislative Committee
Kansas Land Title Association
Support for HB 2092

Mr. Chairman,

We are pleased today to support HB 2092. My name is Chris St. John and I am the Legislative Chair of the Kansas Land Title Association (KLTA). KLTA represents 156 title companies throughout Kansas.

We are proposing an amendment to the list of exclusions to clarify that typical real estate closing costs such as escrow, settlement fees and title insurance premiums would not be considered an impermissible transfer fee. I have attached here to a copy of this proposed amendment which is supported by the Realtor Assn.

HB 2092 is important in that it will eliminate clouds on titles and claims and litigation many years down the road, based on a sellers attempt to maintain a residuary interest in future sales.

We believe that the legislature should determine that such a practice is against public policy and should be prohibited. We would urge your passage of HB 2092.

Respectfully Submitted,

Chris St. John, Chairman
Legislative Committee of the
Kansas Land Title Association

HOUSE FINANCIAL INSTITUTIONS

DATE: 2/2/2009

ATTACHMENT: 5-1

(E) any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing or not exercising the option or right upon the transfer of the property to another person;

(F) any tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority; ~~or~~

(G) any tax, fee, charge, assessment, fine or other amount payable to a homeowners', condominium, cooperative, mobile home or property owners' association pursuant to a declaration or covenant or law applicable to such association; ~~or~~

(H) any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees, or title insurance premiums charged by a real estate title company licensed by the state;

(3) "transfer fee covenant" means a declaration or covenant purporting to affect real property that requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

(b) Any transfer fee covenant recorded in this state on or after July 1, 2009, shall not run with the title to real property and is not binding or enforceable at law or in equity against any subsequent owner, purchaser or mortgagee of any interest in real property as an equitable servitude or otherwise.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Comment [Amend1]: Strike "or" on Page 2, Line 7

Comment [Amend2]: Insert "or" on Page 2, Line 11

Comment [Amend3]: Insert New Section (H)



Date: February 2, 2009
To: House Financial Institutions Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Public Funds – Reciprocal Deposit Programs

Chairman Brown and members of the House Financial Institutions Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 347 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. Thank you for the opportunity to appear today and provide information regarding the vitally important role Reciprocal Deposit Programs play in protecting local and state government deposits invested in qualified Kansas financial institutions.

Our organization has introduced legislation that will codify two Kansas Attorney General's opinions regarding the utilization of Reciprocal Deposit Programs for local and state public fund deposits in Kansas. We appreciate this committee reviewing this subject today and we also look forward to continued deliberations on this matter once the bill is published and available for a formal hearing. At this time, we have provided a copy of our proposed amendments for your review. (Yellow Copy)

I'd like to begin by providing you with some historical background on Reciprocal Deposit Programs in Kansas. On April 15, 2004, Kansas Attorney General Phill Kline issued an opinion letter in response to a request from State Representative Tom Thull that first enabled local government agencies to place public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participated in the Certificate of Deposit Account Registry Service (CDARS), a reciprocal deposit program administered by Promontory Interfinancial Network, LLC. A copy of the 2004 Attorney General's opinion letter is attached to my testimony, along with a Regulatory Mailing (RM2004-01) from then Kansas State Bank Commissioner Clarence Norris that was sent to all state-chartered banks in May, 2004 apprising them that the CDARS reciprocal deposit program was acceptable for public funds deposits. (Blue Copy)

Since the issuance of the 2004 opinion more than \$1 billion in public funds have benefitted from access to the CDARS reciprocal deposit program network. Kansas public entities utilizing the CDARS reciprocal deposit program include, but are not limited to counties, cities, school districts, water districts and community colleges. A subsequent Attorney General's opinion on April 27, 2006, further clarified that banks, savings & loans and savings banks could also utilize

the CDARS program for state idle fund deposits provided that the Pooled Money Investment Board determined that the program is consistent with its investment goals.

Today, there are 83 Kansas banks that are utilizing the CDARS reciprocal deposit program and 23 of those banks have utilized the program for public fund deposits. Use of the CDARS program has increased dramatically in recent months largely because of the loss of excess deposit insurance as a viable option for banks seeking to insure/protect private and public depositors with deposit amounts that exceed the \$250,000 FDIC insurance limit. The ability for Kansas banks to have access to reciprocal deposit programs to maintain the local investment of idle public funds is more important now than ever.

In conclusion, I want to mention that in addition to testimony provided by KBA, I also want to bring your attention to the information packets provided by Promontory Interfinancial Network, LLC that further outline the structure, process and benefits of the CDARS reciprocal deposit program. I would also like to introduce Mr. Lance Caldwell, Business Development Manager for Promontory Interfinancial Network, who is happy to stand for questions regarding their program's use in Kansas.

Once again, thank you for the opportunity to provide information in support of this legislative proposal and I would be happy to stand for questions now or at the appropriate time.

Proposed Amendment: Clarifying Nature of Reciprocal Deposit Programs

9-1407. Exemption of security for insured portion of public deposits. *(a)* That portion of any deposit of public moneys or funds which is insured by the federal deposit insurance corporation, or its successor, need not be secured as provided in this act.

(b) Public moneys or funds deposited pursuant to K.S.A. 9-1401, and amendments thereto, by a municipal corporation or quasi-municipal corporation through a selected bank, savings and loan association or savings bank which are part of a reciprocal deposit program in which the bank, savings and loan association or savings bank: 1) receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and 2) for which no one deposit amount exceeds the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation, need not be secured as provided in this act.

K.S.A. 12-1675 New Section (f) Public moneys deposited pursuant to K.S.A 12-1675(b)(2), and amendments thereto, by the governing body of any governmental unit listed in K.S.A. 12-1675(a), and amendments thereto, through a selected bank, savings and loan association or savings bank which is part of a reciprocal deposit program in which the bank, savings and loan association or savings bank: 1) receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and 2) for which no one deposit amount exceeds the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation, need not be secured as provided in this or any other act.

Amend K.S.A. 75-4237 by adding a new subsection (d) to read as follows:

(d) The director of investments may place deposits through a selected bank, savings and loan association or savings bank which is part of a reciprocal deposit program in which the bank, savings and loan association or savings bank: 1) receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and 2) for which no one deposit amount exceeds the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation. Such deposits need not be secured as provided in this or any other act.



Office of the State Bank Commissioner

Regulatory Mailing

RM2004-01

To : All State Chartered Banks
From: Clarence W. Norris, Bank Commissioner
Date: May 12, 2004
Re: Certificate of Deposit Account Registry Service

As you know, examiners for the Office of the State Bank Commissioner routinely review public deposits and pledging requirements as part of the regular safety and soundness examination of banks. A recent opinion issued by the Kansas Attorney General's Office, Opinion No. 2004-9, permits governmental entities to invest idle funds which are not immediately needed in local banks which participate in a Certificate of Deposit Account Registry Service ("CDARS"). This deposit of funds is deemed to be in compliance with the requirements of K.S.A. 12-1675(b)(2).

Based on our review of the Attorney General's Opinion, as well as information on the CDARS website, www.cdars.com, CDARS is a deposit placement service offered by Promontory Interfinancial Network in which a group of FDIC insured financial institutions reciprocate with one another to provide their large depositors with FDIC insurance on the entire deposit. This allows depositors to place large deposits with their local bank, and that bank in turn places those funds that exceed the FDIC limit with other banks in the CDARS network. In exchange for those deposits, the local bank receives Certificates of Deposit for the same amount from other network member banks. The depositor will continue to manage all funds with the original depository bank, so there is no need to be in contact with multiple banks regarding the funds on deposit. Monthly, the local depository bank will send a statement to the depositor listing each CD, the bank issuing the CD, maturity dates, interest earned, and other details.

The result of this arrangement is that the depositor receives FDIC coverage on its entire deposit, since each bank participating in the CDARS network will only have \$100,000 of the entity's funds on deposit; and the local bank will continue to have the entire amount of the deposit available for use in the local community because of the reciprocal deposits from other financial institutions.

The Attorney General's office opined that the CDARS program would be consistent with K.S.A. 12-1675(b)(2), if the following conditions were met:

1. The Kansas institution receiving the original deposit has a main or branch office located in the required area;
2. The Kansas institution receives reciprocal deposits in an amount equal to the funds placed by the governmental entity;
3. Other participating financial institutions are located within the U.S.; and
4. Each CD is in an amount eligible for full FDIC coverage.

A copy of the Attorney General's Opinion is attached. This mailing should not be construed as an endorsement by the Office of the State Bank Commissioner of the CDARS program or of Promontory Interfinancial Network. This mailing is provided for information purposes only.

April 15, 2004

ATTORNEY GENERAL OPINION NO. 2004-9

The Honorable John T. "Tom" Thull

State Representative, 72nd District

State Capitol, Room 302-S

Topeka, Kansas 67117

Re: Cities and Municipalities--Miscellaneous Provisions--Investment of Public Moneys by Governmental Subdivisions, Units and Entities; Conditions and Limitations; Investments in Certificates of Deposit through the Certificate of Deposit Account Registry Service (CDARS)

Synopsis: K.S.A. 12-1675(b)(2) allows specified governmental entities to invest idle public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS). Specifically, the placement of public funds by a statutorily covered governmental entity through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision or, if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage. Cited herein: K.S.A. 12-1675; 12-1675a.

* * *

Dear Representative Thull:

As State Representative for the 72nd District, you ask our opinion concerning the application of K.S.A. 12-1675(b)(2) to the investment of idle public funds by governmental entities in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS).

K.S.A. 12-1675 requires that idle funds of various government entities that are not immediately needed for the purposes for which they were collected or received be invested only in specified types of investments, including certificates of deposit with maturities of not more than two years in banks, savings and loan associations and savings banks.⁽¹⁾ Such financial institutions are, however, required to have a main or branch office located in the investing governmental unit. If such an

institution is not available, the public funds may be invested in those kinds of financial institutions that have a main or branch office in the county or counties in which all or part of the investing government unit is located.⁽²⁾

You inform us that CDARS is a bank service program by which a participating institution may arrange for the allocation of a customer's deposit in excess of the FDIC insurance limit (*i.e.*, \$100,000) among other participating institutions in amounts that are *then* eligible for insurance coverage by FDIC. The initial participating institution receives reciprocal deposits from other participating institutions (and their respective depositors) in a total amount equal to the customer's deposit. You further inform us that such reciprocal funds placed by other depositors through the participating institution are immediately available to the participating institution to meet the credit needs of its community. As you point out, the amount of a governmental entity's deposit thus effectively remains in the local financial institution through which the funds were placed.

Specifically, you ask whether the placement of public funds by a statutorily covered governmental entity⁽³⁾ through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision or, if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage.

In a review of the legislative history of K.S.A. 12-1675,⁽⁴⁾ former Attorney General Carla Stovall identified a number of complimentary purposes that the statute seeks to serve: Liquidity and a reasonable rate of return; the safeguarding of public funds; and promotion of Kansas financial institutions that would presumably invest in the local community and the State.

Regarding liquidity and a reasonable rate of return, participation in CDARS would maintain liquidity, or immediate availability, to meet community credit needs the same as if the full investment were deposited in a Kansas financial institution. Additionally, as the rate of return is statutorily established,⁽⁵⁾ any negotiated interest rate would need to conform with those statutory parameters.

Regarding the safeguarding of public funds, initially we note that although the term "invested" as required by K.S.A. 12-1675 is not statutorily defined, the ordinary meaning⁽⁶⁾ is "to commit money for a long period in order to earn a financial return; to place money with a view to minimizing risk rather than speculating for large gains at greater hazard."⁽⁷⁾ Certainly, participation in CDARS would increase the safety and minimize the risk of invested funds as all funds would enjoy the benefit of FDIC insured protection, not just the first \$100,000. Thus participation in CDARS would maximize the safeguarding of public funds for amounts over the first \$100,000 of a public entity's investment.

Finally, participation in CDARS would continue to further the promotion of Kansas financial institutions that would presumably invest in the local community and the State as the full amount of a public entity's deposit would be available to the local financial institution to meet community credit needs.

In conclusion, it is our opinion that K.S.A. 12-1675(b)(2) allows the specified governmental entities to invest idle public funds by governmental entities in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS). Specifically, the placement of public funds by a statutorily covered governmental entity through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision, or if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage.

Sincerely,

Phill Kline

Attorney General of Kansas

Camille Nohe

Assistant Attorney General

PK:JLM:CN:jm

1. K.S.A. 12-1675(b)(2).

2. *Id.*

3. County, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision of the state of Kansas having authority to receive, hold and expend public moneys or funds.

4. Attorney General Opinion No. 2001-35.

5. The statutorily required "investment rate" is a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. K.S.A. 12-1675a(g).

6. *See e.g., State v. Cameron*, 30 Kan.App.2d 1156, 1158 (2002) (words in a statute are given their ordinary and plain meaning).

7. Webster's 3rd New International Dictionary, p. 1189 (1968).

Smart Bankers & Smart Investors

The Security of Multi-million Dollar FDIC Insurance

With CDARS, public fund investors can enjoy:

One Bank

Customers sign one agreement and can receive multi-million dollar FDIC insurance by working directly with just you – the bank they know and trust. They do not have to manage multiple bank relationships, use private surety bonds, or track changing collateral values to enjoy peace of mind.

One Rate

Customers negotiate one interest rate with your bank for each maturity. They do not have to enter into multiple rate negotiations, manually consolidate interest disbursements, or calculate blended rates.

One Statement

Customers receive one easy-to-read statement from your bank summarizing all of their CD holdings. This saves them from having to manually consolidate account statements on a recurring basis.

CDARS for public funds in Kansas

In 2004 and 2006, Kansas Attorney General Phill Kline issued opinion letters that enable state and local government agencies to take advantage of the CDARS® service. This means that your bank can now offer public fund investors access to multi-million dollar FDIC insurance for their CD investments. In doing so, you can help public fund managers to avoid the hassles associated with managing multiple bank relationships, using private surety bonds, or tracking collateral. This encourages them to consolidate their investments with you and can release bank collateral for more profitable activities.

Public fund managers like CDARS because they can access added safety while enjoying many time-saving conveniences.

How does CDARS work?

Banks that offer CDARS are members of a special Network. When an investor makes a large deposit with a Network Member, that bank uses the CDARS service to place those funds into CDs issued by other members of the Network. This occurs in increments of less than \$100,000 to ensure that both principal and interest are eligible for full FDIC protection. Other Network Members do the same thing with their customers' funds. With help from a sophisticated matching system, banks exchange funds with other members of the Network. These exchanges, which occur on a dollar-for-dollar basis, bring the full amount of customer deposits back to each originating bank. As a result, you can make the full amount of the public unit's deposit available for community lending purposes (money stays local!) and your public unit clients can access FDIC insurance coverage from many banks while working with just you.

Want to learn more?

We are happy to discuss CDARS further with you. Please contact our representative:

Lance Caldwell, 866.776.6426 ext. 3487
lucaldwell@promnetwork.com



If a depositor is subject to restrictions with respect to the placement of funds in depository institutions, it is the responsibility of the depositor to determine whether the placement of the depositor's funds through CDARS or a particular CDARS transaction satisfies those restrictions. Public fund deposits must be placed through a CDARS Reciprocal transaction to ensure that the total dollar amount is maintained by the financial institution that offers CDARS. Funds may be submitted for placement only after a depositor has signed a CDARS Deposit Placement Agreement with a member bank. CDARS is a registered service mark of Promontory Interfinancial Network. 1110 10/06

Using CDARS for Public Funds In the State of Kansas

The Attorney General for the state of Kansas has issued two Opinion Letters addressing the investment of city, municipality, and state funds using the CDARS Service. A synopsis of each letter appears below.

April 15, 2004

ATTORNEY GENERAL OPINION NO. 2004-9

Re: *Cities and Municipalities*; Miscellaneous Provisions--Investment of Public Moneys by Governmental Subdivisions, Units and Entities; Conditions and Limitations; Investments in Certificates of Deposit through the Certificate of Deposit Account Registry Service (CDARS)

Synopsis:

K.S.A. 12-1675(b)(2) allows specified governmental entities to invest idle public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS). Specifically, the placement of public funds by a statutorily covered governmental entity through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision or, if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage.¹

April 27, 2006

ATTORNEY GENERAL OPINION NO. 2006-10

Re: *State Departments*; Public Officers and Employees--State Moneys--Investment Accounts; Procedure; Market Rate; Investments in Certificate of Deposit Through the Certificate of Deposit Account Registry (CDARS)

Synopsis:

K.S.A. 2005 Supp. 75-4237 does not prohibit a bank from reallocating a deposit of state funds under the Certificate of Deposit Account Registry Service program provided that the Pooled Money Investment Board determines that the program is consonant with its investment goals. Cited herein: K.S.A. 2005 Supp. 12-1675; 75-4201; K.S.A. 75-4218; 75-4232; K.S.A. 2005 Supp. 75-4237; 84-3-104.²

Source: <http://www.kscourts.org/ksag/opinions/2004/2004-009.htm>
Source: <http://www.kscourts.org/ksag/opinions/2006/2006-010.htm>

CDARS satisfies the FDIC's requirements for agency pass-through deposit insurance coverage.

If a depositor is subject to restrictions with respect to the placement of funds in depository institutions, it is the responsibility of the depositor to determine whether the placement of the depositor's funds through CDARS or a particular CDARS transaction satisfies those restrictions. Public fund deposits must be placed through a CDARS Reciprocal transaction to ensure that the total dollar amount is maintained by the financial institution that offers CDARS.

CDARS is a registered service mark of Promontory Interfinancial Network, LLC.

10/06



FDIC

Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429

Legal Division

July 29, 2003

Mark T. Young, Esquire
Sievert, Young & Donahoe LLP
Suite 1650
15910 Ventura Boulevard
Encino, California 91436-2842

Dear Mr. Young:

This is in response to your request for an opinion on the FDIC deposit insurance coverage available for deposits purchased through a program sponsored by Promontory Interfinancial Network ("Network"). Entitled the "Certificate of Deposit Account Registry Service" ("CDARS"), the program is a deposit-placement service designed to allow FDIC-insured depository institutions to accept deposits of more than \$100,000 and obtain full coverage for the depositor by spreading the funds among as many separate FDIC-insured institutions as necessary so that no institution holds more than \$100,000 (principal plus interest) for each depositor. Your view is that FDIC insurance would apply to all deposits placed through the CDARS program, assuming the program is operated as indicated in the materials enclosed with your letter.

The applicable materials you provided to us are marked "02/03 Version." The "Participating Institution Agreement" defines a *Participating Institution* as an institution participating in the CDARS program and indicates that a *Participating institution* may act from time to time in one of three capacities: a *Relationship Institution* – an institution that submits its depositors' funds for placement through CDARS and acts as custodian with respect to its depositors' certificates of deposit ("CDs"); an *Issuing Institution* – an institution that issues CDs to depositors for funds placed with the *Participating Institution* through CDARS; and a *Surplus Institution* – an institution that on an order date is willing to accept time deposits in excess of the funds, if any, it has submitted for placement through CDARS on that order date.

"The CDARS Deposit Placement Agreement" provides the terms and conditions upon which the *Relationship Institution* will place a depositor's funds with other FDIC-insured institutions (*Issuing Institutions*) that have entered into similar contracts with the Network. The agreement states that the *Relationship Institution* will act as the depositor's agent in placing funds in CDs with the *Issuing Institutions*. It indicates that: the *Relationship Institution* will act as the depositor's custodian with respect to the CDs and has entered into an agreement with The Bank of New York ("BNY") to act as the *Relationship Institution's* sub-custodian with respect to the CDs for which the

Relationship Institution is acting as the depositor's custodian; each CD for which the *Relationship Institution* is acting as the depositor's custodian will be recorded on the *Issuing Institution's* records in the name of the sub-custodian, BNY; the CD will be recorded on BNY's records in the *Relationship Institution's* name; and the CD will be recorded on the *Relationship Institution's* records in the depositor's name.

The Participating Institution Agreement contains these relevant disclosure and recordkeeping provisions:

Section 9.01 Recordkeeping for FDIC Purposes

As custodian for your Depositors, you will maintain, in accordance with applicable published requirements of the FDIC, a record of (i) the name, address, taxpayer identification number, and amount of the account of each Depositor for which CDs have been issued through CDARS and (ii) any representative capacity in which the Depositor may be acting.

Section 9.04 Recordation of CDs

Each CD that you issue will be established on your deposit account records in the name of "[Name of Sub-custodian], acting as agent for itself and others, each acting for itself and others," or in such other manner of recordation as may be approved from time to time by the FDIC to permit "pass-through" of deposit insurance to the beneficial owner of the CD.

The agreement between BNY (the sub-custodian) and the *Participating Institutions* specifies that the sub-custodian will:

- 2. Record each CD as issued by you [the issuing institution] in the name of "BNY, as agent for itself and others, each acting for itself and others" (or such other manner of recordation as may be approved from time to time by the FDIC to permit "pass-through" of deposit insurance) . . . (Schedule A)*

Discussion

Deposit insurance is provided under the Federal Deposit Insurance Act, as implemented by the FDIC's regulations, based on the rights and capacities in which deposits are held at FDIC-insured depository institutions. 12 U.S.C. §1821(a) and 12 CFR Part 330. For deposits held by an agent for its principals at FDIC-insured

institutions, such as in the CDARS program, deposit insurance is said to "pass through" the holder of the account (the agent) to the owners of the funds (the principals). 12 CFR §330.7. The same logic applies where an agent is acting for multiple owners/principals and where there are multiple levels of agency relationships. The FDIC's deposit insurance regulations impose specific requirements for funds held in a fiduciary relationship. 12 CFR §330.5(b). Essentially, as long as the institution's deposit account records indicate that the funds are held in an agency capacity and the institution's records, the agent's records or an authorized third-party's records, maintained in good faith and in the ordinary course of business, designate the ownership interest of the principal(s) in the account, the FDIC will insure the funds on a pass-through basis as if each principal had placed his or her respective funds directly with the applicable depository institution.

For deposits held in multi-tiered fiduciary relationships, such as in the CDARS program, special rules apply. One way to satisfy the disclosure and recordkeeping requirements is for the deposit account records of an insured institution to indicate the existence of each and every level of the fiduciary relationships and disclose at each level the names and interest of the person (s) on whose behalf the party at that level is acting. Another way is to: expressly indicate on the deposit account records of the insured institution that there are multiple levels of fiduciary relationships; disclose the existence of additional levels of fiduciary relationships in records by parties at subsequent levels; and disclose at each of the levels the names and interests of the persons on whose behalf the party at that level is acting. 12 CFR §330.5(b)(3).

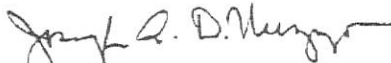
The CDARS program is a self-described deposit-placement service in which participating institutions act as agents for depositors in placing funds at other participating institutions. As specified in the above-quoted provisions of the applicable CDARS documents: (1) the *Issuing Institutions'* records will indicate that the deposits are being held by BNY "acting as agent for itself and others, each acting for itself and others"; (2) BNY's records will record each CD held by BNY as sub-custodian for the *Relationship Institution* as custodian for its depositors; and (3) the *Relationship Institution's* records (and/or an authorized third party's records) will contain the name, address and other identifying information of each depositor for which CDs are purchased through CDARS. This methodology conforms to the disclosure and recordkeeping requirements in section 330.5(b) of the FDIC's regulations. As such, the FDIC's requirements for agency pass-through deposit insurance coverage would be satisfied and, thus, the FDIC would regard each depositor/principal to be the insured party per participating institution for deposit insurance purposes.

As explained in the CDARS materials, please note that if the same depositor/principal also has an ownership interest in other deposits at the same *Issuing Institution*, those deposits would be added to his or her ownership interests in deposits (held in the same ownership capacity) placed through the CDARS system and insured in the aggregate to a limited of \$100,000.

In summary, based on the CDARS information in the materials enclosed with your letter, we agree that deposits placed through the CDARS system would be insured on a pass-through basis under the FDIC's rules on the insurance coverage of agency or custodial accounts. For this coverage to be available, the recordkeeping and other applicable procedures specified in the materials would have to be followed. These views are based on the information contained in the version of the CDARS materials enclosed with your letter. Revisions to those documents on deposit ownership and recordkeeping may affect the deposit insurance coverage results. Also, this opinion addresses only the deposit insurance implications of the CDARS program. It is not intended to address any other legal or policy issues.

I hope this is fully responsive to your inquiry. Feel free to call me 202-898-7349 with any additional questions or comments.

Sincerely yours,



Joseph A. DiNuzzo
Counsel

How CDARS® Can Work for You

Full Insurance. Using the CDARS service, you can access up to \$50 million in FDIC protection on CD investments.¹

One Bank. You work with us – the bank you know and trust – to secure large deposits (from \$10,000 to \$50,000,000).

One Rate. You earn one interest rate on your CD investments through CDARS. With CDARS, there is no need to negotiate multiple rates or manually tally disbursements for each CD.

One Statement. You receive one regular statement detailing your CD investments. You no longer need to consolidate statements at the end of each month, quarter, or year.

No Fees. There are no hidden fees of any kind. We do not charge annual fees, subscriptions fees, or transaction fees for using the CDARS service; the rate you see is the rate you get.

No Collateralization. Because CDARS deposits are eligible for full FDIC protection, you may not need to collateralize your deposits, thus eliminating the time-consuming task of tracking collateral values.

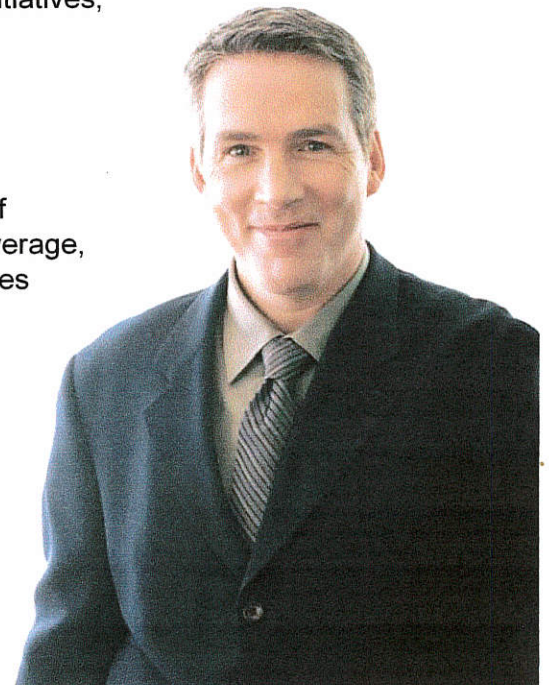
A Wide Variety of Maturities. You can select from various maturities – ranging from 4 weeks to 5 years (260 weeks) – and choose the terms that best suit your investment needs. You also can ladder your CDs or combine maturities to effectively create a customized term.

Community Investment. Your funds can support lending initiatives, including special development projects that strengthen the local community.²

To learn more, contact your account manager or customer service representative. Sign up today and enjoy the peace of mind associated with up to \$50 million in FDIC insurance coverage, along with the time-saving conveniences and other advantages of the CDARS service.

[1] Funds may be submitted for placement only after a depositor enters into a CDARS Deposit Placement Agreement with us. The agreement contains important information and conditions regarding the placement of funds by us through CDARS.

[2] Because funds are exchanged on a dollar-for-dollar basis with other banks in the network, we can use the full amount of deposits placed through CDARS for local lending, which may satisfy some depositors' local investment goals/mandates. Alternatively, with a depositor's consent, we may choose to receive fee income instead of deposits from other banks. Under these circumstances, deposited funds would not be available for local lending.



The Simple, Easy CDARS® Experience

For many reasons, you've decided to deposit your funds at our bank using the CDARS service, including:

- You want your deposits to be eligible for full FDIC insurance.
- You want the convenience of working with a single institution.
- You want the satisfaction of putting your funds to work in the local community.*
- You want your deposits to earn CD-level interest.

So how do you get started? Depositing through CDARS is as easy as 1, 2, 3.

1. Set up your account by completing a CDARS Deposit Placement Agreement. By monitoring your existing relationships, you maintain your eligibility for full FDIC coverage on all deposits – far beyond the standard FDIC insurance maximum.
2. Agree to an interest rate with us for the CD maturity selected. We will ask you how you would like your interest to be paid – monthly, quarterly, semi-annually, annually, or at maturity – as well as whether interest proceeds should be paid directly to you or placed into your account with us. Then make your deposit.
3. We will place your funds through CDARS into multiple CDs under the FDIC maximum at other network institutions to assure that your entire deposit is eligible for full FDIC coverage. When your CDs are issued, you will receive notification confirming your deposit.

CONTAINS CONFIDENTIAL INFORMATION

Date	05/30/08			
Page	2 of 3			
ACCOUNT OVERVIEW				
Account ID:	1001224567	Effective Date:	01/31/08	
Product Name:	26-WEEK NON-PERSONAL CD	Maturity Date:	07/31/08	
Interest Rate:	2.500%	YTD Interest Paid:	\$792.54	
Account Balance:	\$70,597.42	Int Earned Since Last Stmt:	\$199.67	
The Annual Percentage Yield Earned is 3.00%				
CD Issued by Winchester County Bank				
YTD Interest Paid:	\$139.67	05/01/08	OPENING BALANCE	\$13,766.03
Int Earned Since Last Stmt:	\$38.95	05/30/08	ENDING BALANCE	\$13,805.65
CD Issued by Southeast Regional Bank				
YTD Interest Paid:	\$949.87	05/01/08	OPENING BALANCE	\$65,637.89
Int Earned Since Last Stmt:	\$164.97	05/30/08	Interest Payment	164.97
		05/30/08	ENDING BALANCE	\$63,796.77
ACCOUNT OVERVIEW				
Account ID:	1003456789	Effective Date:	01/31/08	
Product Name:	26-WEEK NON-PERSONAL CD	Maturity Date:	07/31/08	
Interest Rate:	2.500%	YTD Interest Paid:	\$961.22	
Account Balance:	\$100,823.40	Int Earned Since Last Stmt:	\$262.79	
The Annual Percentage Yield Earned is 3.00%				
CD Issued by Springtown Bank				
YTD Interest Paid:	\$819.97	05/01/08	OPENING BALANCE	\$83,195.87
Int Earned Since Last Stmt:	\$209.19	05/30/08	ENDING BALANCE	\$83,404.99
CD Issued by First Eagleville Bank				
YTD Interest Paid:	\$171.25	05/01/08	OPENING BALANCE	\$17,274.74
Int Earned Since Last Stmt:	\$43.67	05/30/08	Interest Payment	43.67
		05/30/08	ENDING BALANCE	\$17,418.41
ACCOUNT OVERVIEW				
Account ID:	1004567890	Effective Date:	01/31/08	
Product Name:	52-WEEK NON-PERSONAL CD	Maturity Date:	01/29/09	
Interest Rate:	2.500%	YTD Interest Paid:	\$869.87	
Account Balance:	\$100,697.46	Int Earned Since Last Stmt:	\$282.48	
The Annual Percentage Yield Earned is 3.00%				
CD Issued by Loring Savings Bank				
YTD Interest Paid:	\$876.65	05/01/08	OPENING BALANCE	\$88,945.58
Int Earned Since Last Stmt:	\$273.58	05/30/08	Interest Payment	273.58
		05/30/08	ENDING BALANCE	\$89,169.16
CD Issued by Kendall Bank and Trust				
YTD Interest Paid:	\$113.32	05/01/08	OPENING BALANCE	\$11,499.49
Int Earned Since Last Stmt:	\$28.90			

CDARS® is a registered service mark of Promontory Interfinancial Network, LLC.

What else do I need to know?

You will receive a monthly statement that lists all of your CDs, the maturity dates and issuers, as well as your interest earned and other details.

We are the only people you'll need to deal with at any time or for any service – including deposits, re-investments, withdrawals, and statements.

In addition to your monthly statements, you will receive a single year-end 1099 that reports your taxable income (private investors only).

It's as easy and simple as that.

* Because deposited funds are exchanged on a dollar-for-dollar basis with other banks in the network, we can use the full amount of a deposit placed through CDARS for local lending, satisfying some depositors' local investment goals/mandates. Alternatively, with a depositor's consent, our bank may choose to receive fee income instead of deposits from other banks. Under these circumstances, deposited funds would not be available for local lending.

Who Uses CDARS®

CDARS depositors come from many different markets within our Member Banks. Why? Because many types of customers are attracted to the benefits associated with the CDARS service: security of full FDIC insurance; CD-level rates; and convenience of working with one bank. For more information, visit www.promnetwork.com or call 866.776.6426.

Businesses

Of All Sizes:

- Small businesses, including partnerships, sole proprietorships, and entrepreneurial ventures
- Mid-size companies (public and private)
- Corporations (public and private)
- Franchises

Of All Types:

- | | |
|----------------|-----------------|
| ● Distributors | ● Manufacturers |
| ● Wholesalers | ● Retailers |

Public Funds

- Government agencies
- Municipalities (villages, town, cities, counties)
- Police departments
- Fire districts
- Public colleges and universities
- Public hospitals
- School districts
- State Funds
- Utility districts (sewer, water, power, etc.)

Non-Profits

- Charities
- Churches
- Colleges and universities
- Community foundations
- Endowment funds
- Foundations
- Homeowners associations
- Hospitals
- Religious institutions

Others

- Attorneys and law firms
- Banks and credit unions (for CRA credit or as earning assets)
- CPAs
- Financial planners
- Escrows
- 1031 tax-free property exchanges
- Estate planners
- Farms and ranches
- Private investors
- Trusts/Trustees

The authority of institutional customers to invest through CDARS may be subject to restrictions under applicable law and/or investment policies. CDARS is a registered service mark of Promontory Interfinancial Network, LLC.

Average CDARS Holdings by Customer Type

Customer Type	Approximate Average Holdings Per Customer*
Banks & Credit Unions	\$5,625,000
Public Entities	\$2,875,000
Partnerships	\$1,100,000
Corporations	\$1,075,000
Non-Profits	\$750,000
Estates & Trusts	\$700,000
Associations & Clubs	\$600,000
Individuals	\$550,000
Average Holdings Across All Customer Types	\$900,000

* As of 10/1/08

SOUTHEAST REGIONAL BANK
1234 AMERICA DRIVE
TUSCALOOSA, AL 35442

HILLVALE MANUFACTURING
567 STATESIDE AVENUE
BIRMINGHAM, AL 35201

Date 10/26/06
Account 1234567890
Page 1 of 1

Subject: New Account Notice

Thank you for purchasing certificate(s) of deposit through Southeast Regional Bank. These deposit(s) have been placed by us, as your agent and custodian, through CDARS with one or more FDIC-insured depository institutions. Per your request, the funds will be resubmitted for deposit at maturity. Please advise us if you wish to amend these instructions. If any of the following information is incorrect, or if you have any questions, please contact us at **205-555-1212**.

Account Number	1234567890	Principal Balance	1,000,000.00
Effective Date	10/26/06	Interest Rate	4.68866%
Maturity Date	10/25/07	Annual Percentage Yield	4.80%
Interest Payment Frequency	At Maturity		
Interest Disbursement Instructions	Credit to Principal		
Maturity Disbursement Instructions	Reinvest		

Your certificate(s) of deposit were issued by the following FDIC-insured depository institutions(s);

Oak Street Savings Bank	Rhinebeck, NY	93,500.00
Winchester County Bank	Rockford, MN	36,500.00
Bend Community Bank	Oakland, CA	93,500.00
Skyfeld Bank	Burlington, NC	35,500.00
Springtown Bank	Springtown, WV	93,500.00
Community Bank of Alabaster	Alabaster, WI	93,500.00
First Eagleville Bank	Richmond, MO	25,859.29
South Street Community Bank	Chicago, IL	93,500.00
Coldwater Community Bank	Coldwater, VT	93,500.00
Lockland Savings Bank	Forest Lake, MN	93,500.00
Downtown Bank and Trust Company	Jonestown, PA	35,140.54
Loring Savings Bank	Loring, IL	93,500.00
AmeriNorth Bank	Nisswa, MN	93,500.00
Woodland Hills Bank	Rochester, MN	13,000.00
Anchorage Community Bank	Anchorage, AK	12,500.17
		<u>1,000,000.00</u>

Below is the depository institution(s) where you do not wish your funds placed, as you indicated at the time you submitted your funds to us for placement through CDARS.

MIDWAY FEDERAL BANK	Sioux Falls, SD
COMMUNITY BANK OF CHARLESTON	Charleston, SC
FOREST VIEW SAVINGS BANK	Evansville, IN

Thank you for your business.

COLDWATER COMMUNITY BANK
555 MAIN DRIVE
TUSCALOOSA, AL 35442

Date 03/30/07
Page 1 of 3

JANE SMITH
123 COUNTY ROAD
GORDO, AL 35466

Subject: CDARS Customer Statement

Below is a summary of your certificate(s) of deposit, which we are holding for you as your custodian. These certificate(s) of deposit have been issued through CDARS by one or more FDIC-insured depository institutions. Should you have any questions, please contact us at **205-555-1212**, or send an email to bankquestions@coldwaterbank.com.

Summary of Accounts Reflecting Placements Through CDARS

Account ID	Effective Date	Interest Rate	Maturity Date	Opening Balance	Ending Balance
1234567890	05/25/06	5.06967%	05/24/07	\$103,965.40	\$104,413.98
1234567891	05/25/06	5.21217%	05/22/08	\$104,079.11	\$104,540.83
1234567892	05/25/06	5.25963%	05/21/09	\$104,116.98	\$104,583.08
TOTAL				\$312,161.49	\$313,537.89

CDARS is a service mark of Promontory Interfinancial Network, LLC.

ACCOUNT OVERVIEW

Account ID: 1234567890
Product Name: 52-WEEK PERSONAL CD
Interest Rate: 5.06967%
Account Balance: \$104,413.98
 The Annual Percentage Yield Earned is 5.20%.

Effective Date: 05/25/06
Maturity Date: 05/24/07
YTD Interest Paid: \$1,297.02
Int Earned Since Last Stmt: \$448.58

CD Issued by Southeast Regional Bank

YTD Interest Paid:	\$1,219.20	03/01/07 OPENING BALANCE	\$97,727.47
Int Earned Since Last Stmt:	\$421.67	03/30/07 Interest Payment	421.67
		03/30/07 ENDING BALANCE	\$98,149.14

CD Issued by Community Bank of Alabaster

YTD Interest Paid:	\$77.82	03/01/07 OPENING BALANCE	\$6,237.93
Int Earned Since Last Stmt:	\$26.91	03/30/07 Interest Payment	26.91
		03/30/07 ENDING BALANCE	\$6,264.84

ACCOUNT OVERVIEW

Account ID: 1234567891
Product Name: 2-YEAR PERSONAL CD
Interest Rate: 5.21217%
Account Balance: \$104,540.83
 The Annual Percentage Yield Earned is 5.35%.

Effective Date: 05/25/06
Maturity Date: 05/22/08
YTD Interest Paid: \$1,334.86
Int Earned Since Last Stmt: \$461.72

CD Issued by Springtown Bank

YTD Interest Paid:	\$1,181.35	03/01/07 OPENING BALANCE	\$92,110.01
Int Earned Since Last Stmt:	\$408.62	03/30/07 Interest Payment	408.62
		03/30/07 ENDING BALANCE	\$92,518.63

CD Issued by First Eagleville Bank

YTD Interest Paid:	\$153.51	03/01/07 OPENING BALANCE	\$11,969.10
Int Earned Since Last Stmt:	\$53.10	03/30/07 Interest Payment	53.10
		03/30/07 ENDING BALANCE	\$12,022.20

ACCOUNT OVERVIEW

Account ID: 1234567892
Product Name: 3-YEAR PERSONAL CD
Interest Rate: 5.25963%
Account Balance: \$104,583.08
The Annual Percentage Yield Earned is 5.40%.

Effective Date: 05/25/06
Maturity Date: 05/21/09
YTD Interest Paid: \$1,347.47
Int Earned Since Last Stmt: \$466.10

CD Issued by Loring Savings Bank

YTD Interest Paid: \$918.19
Int Earned Since Last Stmt: \$317.61

03/01/07	OPENING BALANCE	\$70,947.12
03/30/07	Interest Payment	317.61
03/30/07	ENDING BALANCE	\$71,264.73

CD Issued by Lockland Bank

YTD Interest Paid: \$429.28
Int Earned Since Last Stmt: \$148.49

03/01/07	OPENING BALANCE	\$33,169.86
03/30/07	Interest Payment	148.49
03/30/07	ENDING BALANCE	\$33,318.35

Thank you for your business.

SPRINGTOWN BANK
 123 MAIN STREET
 PARKERSBURG, WV 26101

MERCHANT & LYNN, LLC
 567 LOVE DRIVE
 MORGANTOWN, WV

Date 10/24/06
 Account 12345678
 Page 1 of 1

Subject: Maturity Notice

Below is a summary of your certificate(s) of deposit that have been placed through CDARS with one or more FDIC- insured depository institutions that will mature on November 09, 2006. You had requested that the principal and interest be transferred to your account 1234-5678 at maturity. Please advise us prior to 12:00 noon ET on the business day before maturity if you wish to amend these instructions. If you have any questions, please contact us at **304-555-1212**.

Account Number	12345678	Interest Payment Frequency	At Maturity
Original Principal Amount	100,000.00	Interest Disbursement Type	Transfer
Principal Balance	100,000.00	Anticipated Interest	2,340.06
Anticipated Payout at Maturity	102,340.26	Anticipated Amount Withheld	0.00
Maturity Date	11/09/06	Interest Rate	4.64%
Maturity Disbursement Type	Transfer	Annual Percentage Yield	4.75%

Your certificate(s) of deposit were issued by the following FDIC-insured depository institution(s);

	Principal Balance	Anticipated Interest	Anticipated Amt Withheld	Anticipated Payout at Maturity
Woodland Hills Bank	96,000.00	2,246.84	0.00	98,246.84
Downtown Bank & Trust	<u>4,000.00</u>	<u>93.62</u>	<u>0.00</u>	<u>4,093.62</u>
	100,000.00	2,340.46	0.00	102,340.46

Anticipated interest and withholding are estimated amounts and assume that the entire principal remains on deposit until maturity. Because interest on your certificate(s) of deposit accrues daily, early or partial withdrawals, reinvestments, or other factors may affect the actual interest and amount withheld for taxes at maturity.

Thank you for your business.