

## **INTERPRETIVE LETTER NO. 98-12 (SEPTEMBER 8, 1998)**

### **State banks may pledge assets to secure private deposits.**

The Office of Banks and Real Estate ("Agency") has been asked to determine whether Illinois state-chartered banks ("state banks") are authorized to pledge their assets to secure private deposits. For the reasons and subject to the limitations discussed below, the Agency has concluded that state banks may pledge their assets to secure private as well as public deposits.

Public Act 90-665 amended the Illinois Banking Act ("Act") to give state banks the power to offer any product or service that insured savings associations may offer. This authority is subject to the same limitations and restrictions that apply to insured savings associations. 205 ILCS 5/5(25). One service that this new provision authorizes for state banks is the pledging of their assets to secure private deposits.

Section 5(7) of the Act permits state banks to pledge their assets to secure deposits of public money of the United States, any state, or any political corporation or subdivision. 205 ILCS 5/5(7)(c) &(d). Although Illinois savings banks were previously subject to the same restriction on pledging assets to secure only deposits of public funds, Public Act 89-74 amended the Savings Bank Act to delete the "public funds" restriction and provide instead that a savings bank could pledge its assets to "secure deposits," private as well as public. 205 ILCS 205/1008(13)(B).

The federal Office of Thrift Supervision ("OTS") issued an interpretation providing that, under the authority of a federal savings association to collateralize deposits under Section 5(b)(2) of the Home Owners' Loan Act, a federal savings association may pledge its assets to secure both public and private deposit accounts to the extent that such activity is consistent with safety and soundness considerations applicable to the particular savings association. 12 U.S.C. 1464(b)(2). *See* OTS Chief Counsel Opinion No. 91/CC-10, Fed. Banking L. Rep. (CCH) 1991-92 Transfer Binder, par. 82,535.

Under Section 5(25) of the Act, state banks are now authorized to pledge their assets to secure private deposit accounts to the same extent as insured savings associations under Illinois' Savings Bank Act or the federal Home Owners' Loan Act.

The Federal Deposit Insurance Corporation ("FDIC") has issued a regulation that generally requires FDIC approval before a state bank may engage in an activity not permitted for national banks. 12 C.F.R. 362. A state bank should contact the FDIC to determine whether the bank must file an application with and receive approval from the FDIC prior to engaging in the pledging of assets to secure private deposits.

If you have any questions regarding state banks' authority to pledge assets to secure deposits, please feel free to contact us.