



UNIFORM SPECIAL DEPOSITS ACT (2023)

Summary

The Uniform Law Commission drafted the Uniform Special Deposits Act (the “Act”) to provide clarity on an area of law that has been subject to uncertainty for many years. A special deposit is a deposit of money at a bank created for a particular purpose where the person entitled to the money is only determined after a specified event or contingency occurs.

Special deposits play an important role in commerce and industry, but their use has been diminished because of legal uncertainties. Various state laws improperly characterize special deposits as something akin to a trust, bailment, or agency – which do not accurately describe how special deposits are used in practice. Existing case law creates even more confusion because it refers to bank practices that are no longer followed.

The Act establishes a framework for banks and their customers to utilize special deposits with greater certainty of how such deposits will be treated under various circumstances. Importantly, the Act is an “opt in” statute. Banks and their customers must specify in their account agreement that they intend to be covered by the Uniform Special Deposits Act as enacted in a particular state. This feature permits existing relationships to continue undisturbed, and lets parties choose to utilize the protections provided by the Act when they wish. Matters not addressed by the Act are controlled by general laws already governing deposits or contractual arrangements.

The Act remedies four key legal uncertainties. First, the Act clarifies what a “special deposit” is. It establishes clear criteria for a deposit to be considered “special” under the Act. A special deposit must be (i) designated as “special” in an account agreement governing the deposit at a bank, (ii) for the benefit of at least two beneficiaries (one or more of which may be a depositor), (iii) denominated in money, (iv) for a permissible purpose identified in the account agreement, and (v) subject to a contingency specified in the account agreement that is not certain to occur, but if it does occur, creates the bank’s obligation to pay a beneficiary. If all those criteria are satisfied, the deposit is a special deposit.

Second, the Act clarifies the treatment of a special deposit in the event of the bankruptcy of a depositor. Under the current law of many states, it is unclear whether funds deposited into a special deposit could be swept into the bankruptcy estate of the person who deposited them. A special deposit under the Act is “bankruptcy remote” because Section 8 provides that neither a depositor nor a beneficiary has a property interest in a special deposit. No person is entitled to funds in a special deposit until the bank becomes obligated to pay a beneficiary. The only property interest that may arise with respect to a special deposit is in the right to receive payment from the bank after the occurrence of a contingency.

Third, the Act clarifies the applicability of creditor process on a special deposit. Under the current law, a creditor can freeze a special deposit and interfere with the purpose that the deposit is designed to achieve.

Section 9 of the Act provides that creditor process is not enforceable against the bank holding the special deposit, except in limited circumstances. Instead, creditor process may be enforceable against the bank holding a special deposit with respect to any amount that it must pay after the determination of a contingency, but not on the *special deposit itself*. Section 10 provides a similar limitation on using an injunction or temporary restraining order to achieve the same outcome.

Fourth, the Act provides clarity on the legality of the bank exercising a set off or right of recoupment against a special deposit that is unrelated to any payment to a beneficiary or the special deposit itself. Section 11 prohibits set off or recoupment except in limited circumstances.

Once a special deposit has been established under the Act, it creates an assignable and pledgeable interest for a beneficiary – a definite and clear right to payment upon the occurrence of a contingency and notice to the bank, where one may not otherwise exist. The Uniform Special Deposits Act creates a mechanism for parties to a commercial transaction to obtain a low cost and safe return on earnest money. The Uniform Special Deposits Act is narrowly tailored to cure these four legal uncertainties and eliminate doubts so that parties can utilize special deposits with greater confidence.

For more information about the Uniform Special Deposits Act, please contact Legislative Counsel Kari Bearman at (312) 450-6617 or kbearman@uniformlaws.org.