



WHY STATES SHOULD ADOPT THE UNIFORM SPECIAL DEPOSITS ACT

A special deposit is a deposit of money at a bank where the person entitled to the money is only determined after a contingency occurs. Special deposits perform important work in commerce and industry throughout the United States. For example, consider a security deposit paid by a tenant to a landlord, or the deposit to an account that will fund the payment to members of a court-approved class action settlement. Special deposits could serve a variety of parties in business, commerce, and other various contexts, but legal uncertainties have led many to avoid using them.

The Uniform Special Deposits Act (the “Act”) cures the legal uncertainties that prevent businesses and commercial actors from making full use of the special deposit. Under the Act, parties will be able to utilize special deposits with greater confidence that their expectations will be met. Below are some of the reasons why states should adopt the Uniform Special Deposits Act.

- **The Act is an “opt in” statute.** The parties must specifically elect to be covered by the Act in their account agreement. This means parties can elect to utilize the protections for certain deposit products and not others. The optional nature of the Act allows banks to add special deposits to the suite of products they offer without impacting existing arrangements. A bank can choose when and to what extent it will offer a special deposit to customers.
- **The Act was drafted with a minimalist philosophy.** The Act does not duplicate provisions of law governing deposits generally. Instead, it remedies uncertainties in the law surrounding the special deposit. Existing commercial and consumer protection laws supplement the Act, except where inconsistent.
- **The Act prevents parties from using a special deposit to defraud or hinder creditors.** A special deposit must serve a specified permissible purpose from the time the deposit is created until termination. If the deposit ceases to serve a permissible purpose before termination, the protections of the Act fall away, and the funds are subject to the payee’s creditors. For example, a deposit or transfer that is fraudulent or voidable under other law is not protected.
- **Under the Act, a special deposit cannot be swept into the bankruptcy estate of the depositor if there is a bankruptcy filing.** Under the current law of many states, a depositor will have rights to the special deposit before the determination of a contingency that resolves ownership of all or part of the balance of a special deposit. The Act makes it clear that any property interest with respect to a special deposit is the right to receive payment after the occurrence of the contingency—there is no property interest in the special deposit itself.
- **The Act protects special deposits from premature creditor process.** Under current law, creditor process can “freeze” a special deposit and interfere with the purpose that the deposit is designed to achieve. When the special deposit is established, the identity of the bank’s ultimate creditor has not been determined. Under the Act, creditor process is only enforceable against the bank holding the special deposit after the determination of a contingency.

- **The Act protects the special deposit from the bank's set off right.** Under current law of certain states, a bank might exercise a right of set off or recoupment that is unrelated to a payment to a beneficiary (or to the special deposit itself). This has discouraged some from using special deposits. The Act prevents the bank from exercising a right of set off or recoupment to its own advantage with respect to unrelated debtor-creditor relationships.

The Act also clarifies other aspects of a special deposit relationship that have been muddled in the case law. For example, it expressly provides that the relationship between the bank and a beneficiary is a debtor-creditor relationship and that bank does not have a fiduciary duty to any person in connection with a special deposit.

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