

CHAPTER 06-08.6
UNIFORM SPECIAL DEPOSITS ACT

6-08.6-01. Definitions.

In this chapter:

1. "Account agreement" means an agreement that:
 - a. Is in a record between a bank or credit union and one or more depositors;
 - b. May have one or more beneficiaries as additional parties; and
 - c. States the intention of the parties to establish a special deposit in accordance with this chapter.
2. "Bank" means a trust company or a person engaged in the business of banking as defined in section 6-01-02.
3. "Beneficiary" means a person that:
 - a. Is identified as a beneficiary in an account agreement; or
 - b. If not identified as a beneficiary in an account agreement, may be entitled to payment from a special deposit:
 - (1) Under the account agreement; or
 - (2) On termination of the special deposit.
4. "Contingency" means an event or circumstance stated in an account agreement which is not certain to occur but must occur before the bank or credit union is obligated to pay a beneficiary.
5. "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant.
6. "Depositor" means a person that establishes or funds a special deposit.
7. "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing.
8. "Knowledge" of a fact means:
 - a. With respect to a beneficiary, actual knowledge of the fact; or
 - b. With respect to a bank or credit union holding a special deposit:
 - (1) If the bank or credit union:
 - (a) Has established a reasonable routine for communicating material information to an individual to whom the bank or credit union has assigned responsibility for the special deposit; and
 - (b) Maintains reasonable compliance with the routine, actual knowledge of the fact by that individual; or
 - (2) If the bank or credit union has not established and maintained reasonable compliance with a routine described in paragraph 1 or otherwise exercised due diligence, implied knowledge of the fact that would have come to the attention of an individual to whom the bank or credit union has assigned responsibility for the special deposit.
9. "Obligated to pay a beneficiary" or "obligation to pay a beneficiary" means a beneficiary is entitled under the account agreement to receive from the bank or credit union a payment when:
 - a. A contingency has occurred; and
 - b. The bank or credit union has knowledge the contingency has occurred.
10. "Permissible purpose" means a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in an account agreement. The term includes an objective to:
 - a. Hold funds:
 - (1) In escrow, including for a purchase and sale, lease, buyback, or other transaction;
 - (2) As a security deposit of a tenant;
 - (3) That may be distributed to a person as remuneration, retirement or other benefit, or compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

- (4) For distribution to a defined class of persons after identification of the class members and their interest in the funds;
 - b. Provide assurance with respect to an obligation created by contract, including earnest money to ensure a transaction closes;
 - c. Settle an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;
 - d. Provide assurance with respect to an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure; or
 - e. Hold margin, other cash collateral, or funds that support the orderly functioning of financial market infrastructure or the performance of an obligation with respect to the infrastructure.
- 11. "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.
- 12. "Record" means information:
 - a. Inscribed on a tangible medium; or
 - b. Stored in an electronic or other medium and retrievable in perceivable form.
- 13. "Special deposit" means a deposit that satisfies section 6-08.6-04.
- 14. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes an agency or instrumentality of the state.

6-08.6-02. Scope - Choice of law - Forum.

- 1. This chapter applies to a special deposit under an account agreement that states the intention of the parties to establish a special deposit governed by this chapter, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.
- 2. The parties to an account agreement may choose a forum in this state for settling a dispute arising out of the special deposit, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.
- 3. This chapter does not affect:
 - a. A right or obligation relating to a deposit other than a special deposit under this chapter; or
 - b. The voidability of a deposit or transfer that is fraudulent or voidable under other law.

6-08.6-03. Variation by agreement or amendment.

- 1. The effect of sections 6-08.6-01 through 6-08.6-05, 6-08.6-07 through 6-08.6-10, and 6-08.6-13 may not be varied by agreement, except as provided in those sections. Subject to subsection 2, the effect of sections 6-08.6-06, 6-08.6-11, and 6-08.6-12 may be varied by agreement.
- 2. A provision in an account agreement or other record that substantially excuses liability or substantially limits remedies for failure to perform an obligation under this chapter is not sufficient to vary the effect of a provision of this chapter.
- 3. If a beneficiary is a party to an account agreement, the bank or credit union and the depositor may amend the agreement without the consent of the beneficiary only if the agreement expressly permits the amendment.
- 4. If a beneficiary is not a party to an account agreement and the bank or credit union and the depositor know the beneficiary has knowledge of the agreement's terms, the bank or credit union and the depositor may amend the agreement without the consent

of the beneficiary only if the amendment does not adversely and materially affect a payment right of the beneficiary.

5. If a beneficiary is not a party to an account agreement and the bank or credit union and the depositor do not know whether the beneficiary has knowledge of the agreement's terms, the bank or credit union and the depositor may amend the agreement without the consent of the beneficiary only if the amendment is made in good faith.

6-08.6-04. Requirements for special deposit.

A deposit is a special deposit if it is:

1. A deposit of funds in a bank or credit union under an account agreement;
2. For the benefit of at least two beneficiaries, one or more of which may be a depositor;
3. Denominated in a medium of exchange that is currently authorized or adopted by a domestic or foreign government;
4. For a permissible purpose stated in the account agreement; and
5. Subject to a contingency.

6-08.6-05. Permissible purpose.

1. A special deposit must serve at least one permissible purpose stated in the account agreement from the time the special deposit is created in the account agreement until termination of the special deposit.
2. If, before termination of the special deposit, the bank or credit union or a court determines the special deposit no longer satisfies subsection 1, sections 6-08.6-07 through 6-08.6-10 cease to apply to any funds deposited in the special deposit after the special deposit ceases to satisfy subsection 1.
3. If, before termination of a special deposit, the bank or credit union determines the special deposit no longer satisfies subsection 1, the bank or credit union may take action the bank or credit union believes is necessary under the circumstances, including terminating the special deposit.

6-08.6-06. Payment to beneficiary by bank or credit union.

1. Unless the account agreement provides otherwise, the bank or credit union is obligated to pay a beneficiary if there are sufficient actually and finally collected funds in the balance of the special deposit.
2. Except as provided in subsection 3, the obligation to pay the beneficiary is excused if the funds available in the special deposit are insufficient to cover the payment.
3. Unless the account agreement provides otherwise, if the funds available in the special deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be paid the funds that are available or, if there is more than one beneficiary, a pro rata share of the funds available. Payment to the beneficiary making the election under this subsection discharges the bank's or credit union's obligation to pay a beneficiary and does not constitute an accord and satisfaction with respect to another person obligated to the beneficiary.
4. Unless the account agreement provides otherwise, the obligation of the bank or credit union obligated to pay a beneficiary is immediately due and payable.
5. The bank or credit union may discharge the bank's or credit union's obligation under this section by:
 - a. Crediting another transaction account of the beneficiary; or
 - b. Taking other action that:
 - (1) Is allowed under the account agreement for the bank or credit union to obtain a discharge; or
 - (2) Otherwise would constitute a discharge under law.
6. If the bank or credit union obligated to pay a beneficiary has incurred an obligation to discharge the obligation of another person, the obligation of the other person is discharged if action by the bank or credit union under subsection 5 would constitute a

discharge of the obligation of the other person under law that determines whether an obligation is satisfied.

6-08.6-07. Property interest of depositor or beneficiary.

1. A depositor or a beneficiary does not have a property interest in the special deposit itself.
2. The only property interest with respect to a special deposit is the right to receive payment if the bank or credit union is obligated to pay a beneficiary. Any property interest under this subsection is determined under other law.

6-08.6-08. When creditor process is enforceable against bank or credit union.

1. Subject to subsection 2, creditor process with respect to a special deposit is not enforceable against the bank or credit union holding the special deposit.
2. Creditor process is enforceable against the bank or credit union holding a special deposit with respect to an amount the bank or credit union is obligated to pay a beneficiary or a depositor if the process:
 - a. Is served on the bank or credit union;
 - b. Provides sufficient information to allow the bank or credit union to identify the depositor or the beneficiary from the bank's or credit union's books and records; and
 - c. Gives the bank or credit union a reasonable opportunity to act on the process.
3. Creditor process served on a bank or credit union before it is enforceable against the bank or credit union under subsection 2 does not create a right of the creditor against the bank or credit union or a duty of the bank or credit union to the creditor. Other law determines whether creditor process creates a lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even if not enforceable against the bank or credit union.

6-08.6-09. Injunction or similar relief.

A court may enjoin, or grant similar relief that would have the effect of enjoining, a bank or credit union from paying a depositor or beneficiary only if payment would constitute a material fraud or facilitate a material fraud with respect to a special deposit.

6-08.6-10. Recoupment or set off.

1. Except as provided in subsection 2 or 3, a bank or credit union may not exercise a right of recoupment or set off against a special deposit.
2. An account agreement may allow the bank or credit union to debit the special deposit:
 - a. When the bank or credit union becomes obligated to pay a beneficiary, in an amount that does not exceed the amount necessary to discharge the obligation;
 - b. For a fee assessed by the bank or credit union that relates to an overdraft in the special deposit account;
 - c. For costs incurred by the bank or credit union that relate directly to the special deposit; or
 - d. To reverse an earlier credit posted by the bank or credit union to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under other law governing mistake and restitution.
3. The bank or credit union holding a special deposit may exercise a right of recoupment or set off against an obligation to pay a beneficiary, even if the bank or credit union funds payment from the special deposit.

6-08.6-11. Duties and liability of bank or credit union.

1. A bank or credit union does not have a fiduciary duty to any person with respect to a special deposit.

2. When the bank or credit union holding a special deposit becomes obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank or credit union and beneficiary.
3. The bank or credit union holding a special deposit has a duty to a beneficiary to comply with the account agreement and this chapter.
4. If the bank or credit union holding a special deposit does not comply with the account agreement or this chapter, the bank or credit union is liable to a depositor or beneficiary only for damages proximately caused by the noncompliance. Except as provided by other law, the bank or credit union is not liable for consequential, special, or exemplary damages.
5. The bank or credit union holding a special deposit may rely on records presented in compliance with the account agreement to determine whether the bank or credit union is obligated to pay a beneficiary.
6. If the account agreement requires payment on presentation of a record, the bank or credit union shall determine within a reasonable time whether the record is sufficient to require payment. If the agreement requires action by the bank or credit union on presentation of a record, the bank or credit union is not liable for relying in good faith on the genuineness of the record if the record appears on its face to be genuine.
7. Unless the account agreement provides otherwise, the bank or credit union is not required to determine whether a permissible purpose stated in the agreement continues to exist.

6-08.6-12. Term and termination.

1. Unless otherwise provided in the account agreement, a special deposit terminates five years after the date the special deposit was first funded.
2. Unless otherwise provided in the account agreement, if the bank or credit union cannot identify or locate a beneficiary entitled to payment when the special deposit is terminated, and a balance remains in the special deposit, the bank or credit union shall pay the balance to the depositor as a beneficiary.
3. A bank or credit union that pays the remaining balance as provided under subsection 2 has no further obligation with respect to the special deposit.

6-08.6-13. Principles of law and equity.

Title 41, consumer protection law, law governing deposits generally, law related to escheat and abandoned or unclaimed property, and the principles of law and equity, including law related to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this chapter except to the extent inconsistent with this chapter.

6-08.6-14. Uniformity of application and construction.

In applying and construing this chapter, a court shall consider the promotion of uniformity of the law among the states that enact it.