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## BANKRUPTCY AND THE UNIFORM SPECIAL DEPOSITS ACT: INSULATING DEPOSITOR FUNDS FROM CREDITORS

*For nearly a century, commercial parties have eschewed special deposits in favor of more costly and time-consuming mechanisms that, despite their inconvenience, offer more predictable judicial outcomes. However, the Uniform Law Commission recently introduced the Uniform Special Deposits Act (the “Act”), which offers states the ability to adopt a common legal regime that would provide commercial parties with an efficient mechanism to protect funds that will become due to one beneficiary or another upon the occurrence of a contingent future event. This article explores the genesis of the Act, how it will likely interact with existing law, and the benefits it will offer.*

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Special deposits should soon be a safe and efficient tool for contracting parties to structure transactions involving contingencies that would trigger a transfer of funds.<sup>1</sup> In particular, Delaware has recently adopted the Uniform Special Deposits Act (the “Act”) in full, which will go into effect on January 1, 2025.<sup>2</sup> Recognizing the

inconsistencies and resulting inefficiencies in this area of law, the Uniform Law Commission recently approved and recommended that the Act be enacted in all states.<sup>3</sup> Notably, the Act is an “opt-in” statute, which allows users to specify in their account agreements that they intend to be covered by the Act.<sup>4</sup> Under the Act, commercial parties could use special deposits for apartment rental deposits, as well as more complicated transactions where sophisticated parties currently use escrows, trusts, or letters of credit. This article outlines the animating principles of the Act, analyzes the interplay between the Act and creditors’ rights issues,

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<sup>1</sup> The scope of this article is limited to delineating the impact of the Uniform Special Deposits Act on contracting parties and potential creditors. For a full history of the law surrounding special deposits and tensions within and among jurisdictions, see Joseph H. Sommer, *Special Deposits*, THE BUS. LAW., Vol. 76, Pg. 841 (Summer 2021).

<sup>2</sup> An Act to Amend Title 5 of the Delaware Code Relating to the Uniform Special Deposits Act, S. 308, 152<sup>nd</sup> Cong. (2024). As of this publication date, other states that have passed the Act include Colorado, Oklahoma, and Washington.

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<sup>3</sup> UNIF. LAW COMM’N, UNIFORM SPECIAL DEPOSITS ACT (2023).

<sup>4</sup> *Id.*

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