



Effective: July 21, 2008

McKinney's Consolidated Laws of New York Annotated Currentness

Banking Law (Refs & Annos)

☰ Chapter 2. Of the Consolidated Laws

☰ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **§ 600. Merger; when authorized**

The following mergers are hereby authorized:

- (1) One or more corporations organized under the laws of this state and subject to the provisions of article three, article eight, article eleven or article twelve of this chapter with another corporation subject to the provisions of the same article.
- (2) One or more mutual savings banks with another mutual savings bank.
- (3) One or more mutual savings and loan associations with another mutual savings and loan association.
- (4) One or more mutual savings and loan associations with one or more mutual savings banks.
- (5) One or more safe deposit companies with a bank or trust company.
- (6) One or more banks, trust companies, stock-form savings banks or stock-form savings and loan associations, with one or more out-of-state banks as such term is defined in subdivision one of section two hundred twenty-two of this chapter.
- (7) One or more subsidiaries or affiliates of a bank, trust company, savings bank or savings and loan association, which are not a bank, trust company, savings bank or savings and loan association, as those terms are defined in section two of this chapter, with the bank, trust company, savings bank or savings and loan association of which it is a subsidiary or affiliate, as the banking board shall approve and enter on its records; provided, however, that nothing in this subdivision shall be deemed to authorize a bank, trust company, savings bank or savings and loan association to exercise any power or engage in any activity that it may not exercise or engage in pursuant to this chapter. The banking board may promulgate such regulations as it deems necessary and proper to implement and define the provisions of this subdivision. Nothing in this subdivision shall alter, affect or impair any regulation or resolution adopted, or that may be adopted, by the banking board, pursuant to section twelve-a or former sections fourteen-g or fourteen-h of this chapter.
- (8) Such other mergers between and among banking institutions as the banking board may authorize.

CREDIT(S)

(L.1914, c. 369; formerly § 487. Amended L.1923, c. 8, § 1; L.1926, c. 81; L.1933, c. 328, §§ 1, 2. Renumbered § 600 and amended L.1938, c. 684, § 97. Amended L.1942, c. 283; L.1951, c. 830, § 5; L.1957, c. 375, § 3; L.1961, c. 146, § 8; L.1964, c. 501; L.1966, c. 407; L.1969, c. 1039, §§ 1, 2, eff. on the 60th day after May 26, 1969; L.1971, c. 380, §§ 26, 27; L.1973, c. 918, § 1; L.1984, c. 1, § 12; L.1992, c. 222, § 5; L.1993, c. 152, § 2; L.1996, c. 9, § 19; L.2006, c. 455, § 3, eff. Aug. 16, 2006; L.2008, c. 315, § 13, eff. July 21, 2008.)

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Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 601. Merger agreement; authorization; approval; filing

1. A written plan of merger shall be submitted, in duplicate, to the superintendent by the corporations which are to merge. Such plan shall be in form satisfactory to the superintendent, shall specify each corporation to be merged and the corporation which is to receive into itself the merging corporation or corporations, and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the receiving corporation and such name may be the name of any corporation which is a party to such plan or a new name. Such plan may also name the persons who shall constitute the board of directors or trustees of the receiving corporation after the merger shall have been accomplished, provided that the number and qualifications of such persons shall be in accordance with the provisions of this chapter relating to the number and qualifications of directors or trustees of such a corporation; or, in the case of stock corporations, such plan may provide for a meeting of the stockholders to elect a board of directors within sixty days after such merger, and may make provision for conducting the affairs of the corporation meanwhile. In the case of savings banks, such plan may also provide that the place or places of business of the merging bank may be maintained as an office or offices of the receiving bank as provided in paragraph (c) of subdivision two of section two hundred forty of this chapter.

At the time of submission for action by the superintendent of the written plan of merger, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent.

2. In the case of stock corporations, there shall be submitted, in duplicate, to the superintendent with the plan of merger, a certificate of the president, secretary or cashier of each of the corporations which are to merge, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in each county in which any of the merging corporations has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation, except that such certificate of the president, secretary or cashier of the receiving corporation need not certify that such plan was submitted to or approved by vote of the stockholders of such corporation if (a) the total assets of the merging corporation or corporations do not exceed ten per centum of the total assets of the receiving corporation and (b) the plan of merger does not change the name or the authorized shares of capital stock of the receiving corporation or make or require any other change or amendment for which the approval or consent of stockholders of the receiving corporation would be required under provisions of law other than this section.

3. In the case of mutual savings banks, mutual savings and loan associations or credit unions, there shall be submitted, in duplicate, to the superintendent with the plan of merger, a certificate of the president, secretary or cashier of each of the corporations which are to merge, certifying that such plan has been submitted to a special meeting of the board of

trustees or directors of his corporation, that a notice of at least fifteen days, specifying the time, place and object of the meeting, together with a copy of the plan has been mailed to each trustee or director and that such plan has been approved at such meeting by a vote of two-thirds of all the members of such board of trustees or directors.

4. In the case of merger of a safe deposit company into a bank or trust company which owns at least ninety-five per centum of the outstanding shares of each class of the stock of such safe deposit company, in lieu of compliance with subdivisions one and two of this section there may be submitted, in duplicate, to the superintendent a written plan of merger in form satisfactory to the superintendent stating that such safe deposit company as the merging corporation is to be merged into such bank or trust company as the receiving corporation and setting forth any necessary or appropriate terms and conditions of the merger and provisions for carrying it into effect, including, if the receiving corporation does not own all the outstanding stock of the merging corporation, provisions with respect to the cash or other consideration to be paid or delivered to the stockholders of the merging corporation (other than the receiving corporation) upon the merger becoming effective and upon the surrender of their shares. There shall be submitted, in duplicate, to the superintendent with such plan of merger, a certificate of the president, secretary or cashier of the merging corporation and of the receiving corporation, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof. The certificate of the president, secretary or cashier of the merging corporation shall certify the extent of the ownership by the receiving corporation of the outstanding capital stock of the merging corporation. If the receiving corporation does not own all the outstanding stock of the merging corporation, the certificate of the president, secretary or cashier of the merging corporation shall also certify that there has been mailed to each of its stockholders of record (other than the receiving corporation), at the address appearing upon the books of the merging corporation, a copy of the plan of merger. Any holder of a share or shares of stock of the merging corporation not owned by the receiving corporation may, at any time prior to the expiration of twenty days after the date of mailing of the plan of merger to the stockholders of the merging corporation, object to the merger and demand payment for his stock. Such objection and demand must be in writing and filed with the receiving corporation. Thereupon such stockholder and the receiving corporation shall have the right to have such stock appraised and paid for as provided in section six thousand twenty-two of this chapter, subject to the conditions and provisions of said section (other than the conditions and provision of subdivisions one, two and three thereof); except that (a) the time within which the receiving corporation may mail to such stockholder a written offer accompanied by a balance sheet and profit and loss statement of the merging corporation as provided in subdivision seven of said section shall expire thirty days after the merger takes effect, (b) all references in subdivision eight of said section to the stockholders' authorization date shall be deemed to refer to the date of mailing of the plan of merger to the stockholders of the merging corporation, and (c) all references in said section to the notice of election to dissent shall be deemed to refer to the demand of a stockholder of the merging corporation for payment of his stock.

CREDIT(S)

(L.1914, c. 369; formerly § 488. Amended L.1933, c. 328, § 3. Renumbered § 601 and amended L.1938, c. 684, § 98. Amended L.1952, c. 316, § 1; L.1956, c. 39, §§ 1, 2; L.1956, c. 464, § 6; L.1957, c. 722; L.1961, c. 146, § 9; L.1963, c. 489, § 10; L.1964, c. 849, § 64; L.1965, c. 55, § 4; L.1965, c. 776, § 6; L.1968, c. 248, § 2, eff. April 1, 1968; L.1977, c. 509, § 14; L.1981, c. 638, § 10; L.1984, c. 1, § 13; L.2006, c. 59, pt. O, § 58, eff. May 11, 2006; L.2010, c. 217, § 22, eff. July 15, 2010.)

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☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 601-a. Purchase of assets

1. The following acquisitions are hereby authorized whether by purchase or otherwise, other than by merger, of all or a substantial part of the assets of:

(a) One or more corporations organized under the laws of this state and subject to the provisions of article three, article eight or article twelve of this chapter by another corporation subject to the provisions of the same article.

(b) One or more safe deposit companies by a bank or trust company.

(c) One or more mutual savings banks by another mutual savings bank.

(d) One or more mutual savings and loan associations by another mutual savings and loan association.

(e) One or more stock-form savings banks by another stock-form savings bank.

(f) One or more stock-form savings and loan associations by another stock-form savings and loan association.

(g) One or more banking institutions by another banking institution to the extent permitted under regulations of the banking board.

2. A written plan providing for the acquisition by one corporation of the assets of another shall be submitted, in duplicate, to the superintendent by both corporations. Such plan shall be in form satisfactory to the superintendent, shall specify the selling and the acquiring corporation, and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect.

At the time of submission for action by the superintendent of the written plan of acquisition of assets, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent; provided, however, that no investigation fee shall be payable under this subdivision with respect to an acquisition to which subdivision two of section six hundred one-b of this article is applicable.

3. There shall also be submitted, in duplicate, to the superintendent with the plan of acquisition of assets, a certificate of the president, secretary or cashier of the selling corporation and, in the event the assets of the selling corporation shall exceed ten per centum of the assets of the acquiring corporation, of the acquiring corporation, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and

that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place, and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in each county in which the selling corporation and, if applicable, the acquiring corporation has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation.

4. Repealed.

5. Nothing contained in this section six hundred and one-a shall be construed to prohibit any other purchase of assets which is otherwise permitted by applicable law.

CREDIT(S)

(Added L.1961, c. 146, § 10. Amended L.1964, cc. 849, 891; L.1965, c. 55, § 5; L.1965, c. 776, § 7, both eff. April 1, 1965; L.1971, c. 380, § 28; L.1977, c. 509, § 15; L.1984, c. 1, § 14; L.1993, c. 152, § 3; L.2006, c. 59, pt. O, § 59, eff. May 11, 2006.)

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☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **§ 601-b. Approval or disapproval of merger or purchase of assets**

1. The superintendent shall approve or disapprove of a proposed merger as authorized by section six hundred of this chapter or a proposed acquisition of all or a substantial part of the assets of any banking organization as authorized by section six hundred one-a of this chapter, as the case may be, within one hundred twenty days after the submission of the proposed plan thereof to him. In determining whether to so approve, the superintendent shall take into consideration (i) the declaration of policy contained in section ten of this chapter, (ii) whether the effect of such merger or acquisition shall be either to expand the size or extent of the resulting or acquiring institution beyond limits consistent with adequate and sound banking and the preservation thereof or result in a concentration of assets beyond limits consistent with effective competition, (iii) whether such merger or acquisition may result in such a lessening of competition as to be injurious to the interests of the public or tend toward monopoly and (iv) primarily, the public interest and the needs and convenience thereof. If the superintendent shall approve such proposed merger or acquisition, he shall file the plan, together with such certificates and the original of the approval of the superintendent, in the office of the superintendent, and, in the case of merger, a duplicate of the plan, together with a duplicate of each of such certificates and a duplicate of the superintendent's approval, shall be filed in the office of the clerk of the county in which the principal office of the receiving corporation is located. Upon such filing in the office of the superintendent, the merger or acquisition shall become effective, unless a later date is specified in the plan, in which event the merger or acquisition shall become effective upon such later date.

2. *Repealed by L.2010, c. 217, § 23, eff. July 15, 2010.*

CREDIT(S)

(Added L.1961, c. 146, § 11. Amended L.1962, c. 682, § 3; L.1965, c. 55, § 6, eff. April 1, 1965; L.2010, c. 217, § 23, eff. July 15, 2010.)

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→ § 601-c. Sale, lease, exchange or other disposition of property, rights, privileges and franchises

1. Subject to subdivision eight of section six hundred five of this chapter, and except as otherwise provided by law or by its organization certificate or other certificate filed pursuant to law, a corporation organized under the laws of this state and subject to the provisions of article three, article six, article eight, article ten or article twelve of this chapter may voluntarily sell, lease, exchange or otherwise dispose of its property, rights, privileges and franchises, or any interest therein or any part thereof; provided, however, that if such sale, lease, exchange or other disposition is not made in the regular course of business of the corporation and involves all or substantially all of its property, rights, privileges and franchises, or an integral part thereof essential to the conduct of the business of the corporation, such sale, lease, exchange or other disposition shall be authorized only in accordance with the following procedure:

(a) In the case of a corporation subject to the provisions of article three, article eight, article twelve or a stock-form banking organization subject to either article six or article ten of this chapter, the board of directors of the corporation by a majority vote of all the members thereof shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of stockholders.

Notice of meeting shall be given to each stockholder of record, whether or not entitled to vote.

The stockholders shall authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations, by vote at a meeting of stockholders of the holders of two-thirds of all outstanding shares entitled to vote thereon.

(b) In the case of a mutual corporation subject to the provisions of article six of this chapter, the board of trustees of the corporation by a vote of a majority of all the members thereof shall approve and authorize the proposed sale, lease, exchange or other disposition and shall fix any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including such shares, bonds or other securities of any other domestic or foreign corporation or corporations as are authorized investments for savings banks, subject to those limitations applicable to such investments.

A verified copy of the minutes of the meeting at which the board of trustees approves and authorizes the proposed transaction shall be filed in the office of the superintendent together with a copy of the agreement governing the proposed transaction, a statement setting forth the reasons why the trustees believe the proposed transaction would be in the best interest of the savings bank, its depositors and the public and such other information as the superintendent may require. In determining whether or not to approve the proposed transaction, the superintendent shall consider

whether the proposed transaction would be in the best interests of the savings bank, its depositors and the public and such other information as the superintendent may deem appropriate. The superintendent shall notify the board of trustees in writing of his or her determination. If the superintendent disapproves, the board of trustees shall abandon the proposed transaction.

(c) In the case of a mutual corporation subject to the provisions of article ten of this chapter, the board of directors of the corporation by a majority vote of all the members thereof shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of shareholders.

Notice of meeting shall be given to each shareholder.

The shareholders shall authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including such shares, bonds or other securities of any other domestic or foreign corporation or corporations as are authorized investments for savings and loan associations, subject to those limitations applicable to such investments, by vote at a meeting of shareholders of the holders of two-thirds in amount of the book value of all outstanding shares entitled to vote thereon.

A verified copy of the minutes of the meetings at which the board of directors and shareholders approve and authorize the proposed transaction shall be filed in the office of the superintendent together with a copy of the agreement governing the proposed transaction, a statement setting forth the reasons why the directors believe the proposed transaction would be in the best interest of the savings and loan association, its shareholders and the public and such other information as the superintendent may require. In determining whether or not to approve the proposed transaction, the superintendent shall consider whether the proposed transaction would be in the best interests of the savings and loan association, its shareholders and the public. The superintendent shall notify the board of directors in writing of his or her determination. If the superintendent disapproves, the board of directors shall abandon the proposed transaction.

2. Notwithstanding stockholder or shareholder authorization, the board may abandon the proposed sale, lease, exchange or other disposition without further action by the stockholders or shareholders, subject to the rights, if any, of third parties under any contract relating thereto.

3. This section shall not be applicable to a sale or disposition of assets the acquisition of which is authorized by section six hundred one-a of this chapter, or to any sale or other disposition of assets after the entry of an order pursuant to subdivision four of section six hundred five of this chapter, or to a sale or disposition of all or substantially all of the assets by a mutual corporation subject to the provisions of article six or article ten of this chapter to a national banking association or national banking associations or a corporation or corporations subject to the provisions of article three, article eight or article twelve of this chapter or to a stock-form corporation subject to article six or article ten of this chapter or to a stock-form federal savings bank or to a stock-form federal savings and loan association.

CREDIT(S)

(Added L.1964, c. 849, § 65, eff. Sept. 1, 1964. Amended L.1980, c. 38, § 1; L.1980, c. 361, § 1; L.1981, c. 1015, § 5; L.1984, c. 1, § 15.)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 602. Effect of merger

At the time when a merger becomes effective:

- (1) the receiving corporation shall be considered the same business and corporate entity as each corporation merged into it;
- (2) all the property, rights, powers and franchises of any corporation that shall be so merged shall vest in the receiving corporation and the receiving corporation shall be subject to and be deemed to have assumed all of the debts, liabilities, obligations and duties of such merged corporation and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the receiving corporation;
- (3) any reference to a merged corporation in any contract, will or document, whether executed or taking effect before or after the merger, shall be considered a reference to the receiving corporation if not inconsistent with the other provisions of the contract, will or document;
- (4) a pending action or other judicial proceeding to which any corporation that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the receiving corporation may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation if the merger had not occurred.

No corporation organized under or subject to the provisions of this chapter which subsequent to January first, nineteen hundred thirty-eight, receives or has received into itself by merger pursuant to any provision of law a corporation organized under or subject to the provisions of any law other than this chapter shall, through such merger, acquire power to engage in any business or to exercise any right, privilege or franchise which is not conferred by the provisions of this chapter upon such receiving corporation.

CREDIT(S)

(L.1914, c. 369; formerly § 494. Renumbered § 602 and amended L.1938, c. 684, § 99; L.1951, c. 830, § 6; L.1952, c. 316, § 2; L.1966, c. 324, § 7, eff. May 10, 1966.)

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→ § 603. Issuance of new certificates of stock or other consideration

The receiving corporation may require the return of the original certificate or certificates held by each stockholder or shareholder in such other corporation or corporations and may issue in lieu thereof new certificates for such number of its own shares, or pay or deliver such other consideration, as such stockholder or shareholder may be entitled to receive under the merger plan.

CREDIT(S)

(L.1914, c. 369; formerly § 495. Renumbered § 603 and amended L.1938, c. 684, § 100; L.1952, c. 316 § 3; L.1959, c. 466, eff. April 16, 1959.)

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➔ **§ 604. Rights of dissenting stockholders**

The following stockholders shall, subject to and by complying with section six thousand twenty-two of this chapter, have the right to receive payment of the fair value of their shares and the other rights and benefits provided by such section:

1. In the case of a merger pursuant to a plan submitted to stockholders as provided in subdivision two of section six hundred one of this chapter, any stockholder of the merging corporation entitled to vote thereon who does not assent thereto;
2. In the case of a plan of acquisition of assets submitted to stockholders as provided in subdivision two of section six hundred one-a of this chapter, any stockholder of the selling corporation entitled to vote thereon who does not assent thereto; and
3. In the case of a sale, lease, exchange or other disposition which requires stockholder authorization under section six hundred one-c of this chapter, any stockholder, entitled to vote thereon, of the corporation making such sale, lease, exchange or other disposition who does not assent thereto, except in the case of a transaction wholly for cash where the stockholders' authorization thereof is conditioned upon the distribution of all the net proceeds of such transaction to the stockholders in accordance with their respective interests within one year after the date of such transaction and upon the dissolution of the corporation.

CREDIT(S)

(Added L.1964, c. 849, § 66, eff. Sept. 1, 1964.)

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→ **§ 604-a. Transfer of fiduciary relationships of a banking institution**

1. If any banking institution, including a bank or trust company, national banking association, savings bank, savings and loan association, federally chartered savings bank, federally chartered savings and loan association, located in this state, shall have transferred all or substantially all of its assets to another banking institution in a transaction subject to this chapter pursuant to a written agreement between the transferor and transferee corporations whereby the transferee corporation has assumed the deposit liabilities, if any, of the transferor corporation and has agreed to assume all fiduciary relationships of the transferor corporation, the transferee corporation may file in the office of the superintendent a certificate in its name and under its corporate seal, signed by its president, secretary or cashier, setting forth a copy of such agreement and stating that the transferee corporation assumes all of the fiduciary relationships of the transferor corporation pursuant to the provisions of this section; provided, however, that such certificate shall not be filed unless the approval of the superintendent shall have been endorsed thereon or annexed thereto before filing.

2. Upon the filing of such certificate in the office of the superintendent, all of the property, rights, powers and franchises of the transferor corporation as fiduciary shall vest in the transferee corporation and the transferee corporation shall be deemed to have assumed all of the debts, liabilities, obligations and duties of the transferor corporation as fiduciary, and to have succeeded to all the fiduciary relationships of the transferor corporation, as fully and with the same effect as is provided in sections one hundred thirty-six-c and six hundred two in the case of a merger, and any reference to the transferor corporation as fiduciary in any capacity, contained in any contract, will or document, whether executed or taking effect before or after the filing of such certificate in the office of the superintendent, shall be considered a reference to the transferee corporation if not inconsistent with the other provisions of the contract, will or document.

3. For the purposes of this section the fiduciary relationships of the transferor shall include all relationships as agent, trustee, guardian, receiver, committee, conservator, executor, administrator, or other fiduciary in any capacity or for any purpose mentioned in section one hundred, and all relationships of the transferor as bailee or depository of personal property.

4. This section shall not be deemed to authorize a transferee corporation to assume any fiduciary relationship of a kind which it would not otherwise have power to undertake and perform. Nothing in this section shall be deemed to authorize any such transferee corporation to maintain as its own office any office previously maintained by the transferor corporation, and authority, if any, to maintain any such office shall be governed by the applicable provisions of law other than this section. This section shall not be deemed to apply to contracts of the transferor for the leasing of safe deposit boxes or vaults.

CREDIT(S)

(Added L.1958, c. 743. Amended L.1963, c. 489, § 8, eff. July 1, 1963; L.1981, c. 115, § 13; L.1993, c. 297, § 9.)

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➔ **[§ 604-b. Repealed by L.1993, c. 297, § 10, eff. July 21, 1993]**

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→ § 605. Voluntary liquidation; sale of assets; forfeiture of charter by non-user

1. Any corporate banking organization, the assets of which have a value at least equal to its liabilities, exclusive of any liability to shareholders or stockholders, as such, may voluntarily wind up its affairs; but no banking organization of which the superintendent has taken possession in accordance with the provisions of section six hundred six of this chapter shall take any steps for such voluntary dissolution until it has received the written approval of the superintendent.

2. To effect a voluntary dissolution of any corporation, a meeting of the stockholders or shareholders of such corporation having full voting rights, and if applicable any other stockholders or shareholders authorized by the organization certificate or by-laws of such corporation to vote on a resolution to effect a voluntary dissolution, shall be held upon not less than twenty days' written notice to each such stockholder or shareholder, either served personally or mailed to the stockholder or shareholder at the address appearing upon the books of the corporation, and containing a statement of the purpose for which such meeting is called. Proof by affidavit of due service of such notice shall be filed in the office of the corporation before or at the time of such meeting.

In the case of a mutual savings bank, a meeting of its board of trustees shall be held upon like notice. Proof by affidavit of due service of such notice shall be filed in the office of the savings bank before or at the time of such meeting.

3. At such a meeting of stockholders or mutual shareholders, such stockholders or mutual shareholders may, by a vote of the owners of at least two-thirds in amount of such stock, or of the capital of such mutual corporation, direct that the corporation be closed and its business wound up. The proceedings of such meeting shall be entered in the minutes of such corporation.

At such a meeting of the board of trustees of a savings bank, the trustees may by vote of not less than two-thirds of their whole number, direct by resolution that the savings bank be closed and its business wound up. The vote on such resolution shall be recorded with the resolution in the minutes of the board of trustees.

A copy of the minutes of such meeting of stockholders or mutual shareholders or board of trustees, verified by the presiding officer and by the secretary of such meeting, shall be filed in the office of the superintendent within five days after the date of such meeting.

4. Within three months after the date of any such meeting, application may be made to the supreme court, after due notice to the superintendent, for an order declaring the business of such corporation closed. In a proper case, the court shall make such order which shall prescribe the notice to be given to creditors and depositors to present their claims to the corporation for payment. In the closing order, the court shall set a date certain by which claims must be presented

to the corporation for payment. The corporation need not consider any claims submitted after that date. Within five days after the making of such order, a certified copy thereof shall be filed in the office of the superintendent. Upon the entry of such order such corporation shall cease to do business and shall wind up its affairs, pay its creditors and depositors, if any, and, except in the case of a mutual savings bank, distribute any remaining assets among its shareholders or stockholders according to their respective rights and interests. The corporation or any creditor or depositor thereof, upon due notice, may apply to the court that issued the closing order for a determination as to any disputed claim or for any other relief necessary to effectuate the liquidation and dissolution of the corporation. Any petition, application, or motion to vacate, set aside, modify or amend such order so as to permit the corporation to resume business shall have incorporated therein a certificate of the superintendent certifying that after investigation the superintendent has found, and the banking board by a three-fifths vote of all its members has found, that the public convenience and advantage will be promoted by the granting of said petition, application or motion.

4-a. (a) Such corporation may, at any time after entry of the order described in subdivision four of this section, cause to be mailed to each person claiming to be, or appearing upon the books of such corporation to be

(1) the owner of any personal property in the custody or possession of such corporation as bailee or depositary for hire or otherwise, including the contents of any safe, vault or box theretofore opened for non-payment of rental in accordance with the provisions of this chapter, or

(2) the lessee of any safe, vault or box, a notice in writing directed by registered mail to such person at his last address as the same appears on the books of such corporation or at his last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault or box, within a period stated in said notice, which period shall be not less than sixty days from the date of such notice, and further notifying such person of the terms and provisions of this subdivision. The contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person to whom such notice is mailed and such corporation shall cease and determine upon the date for removal fixed in such notice. Such person shall have a claim against such corporation for the amount of the unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

(b) If such property or contents shall not be removed, and all rent or storage and other charges theretofore accrued, if any, shall not be paid, within the time fixed by such notice, such corporation shall, within thirty days thereafter, cause such property to be inventoried, or such safe, vault or box, or any package, parcel or receptacle in the custody or possession of such corporation as bailee or depositary for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried, in the presence of an officer of such corporation and of a notary public, not an officer or employee thereof. Such property or contents shall thereupon be sealed up by such notary public in a package distinctly marked by him with the name of the person in whose name such property or such safe, vault, box, package, parcel or receptacle stands upon the books of such corporation, and a copy of the inventory of the property therein shall be certified and attached thereto by such notary public. Such package may be kept in such place as the corporation, with the approval of the superintendent, may determine, at the expense and risk of the person in whose name it stands until delivered to such person or until sold, destroyed or otherwise disposed of as hereinafter provided. Such package may, from time to time, pending final disposition of its contents, be opened in the presence of an officer of such corporation and of a notary public, not an officer or employee thereof, for inspection or appraisal, or to enable such corporation to exercise any of the powers conferred or duties imposed by this article. Whenever such package is opened, the notary shall endorse on the outside thereof the date of opening and re-sealing, and shall certify and attach thereto a list of the articles, if any, removed therefrom, or placed or replaced therein, and an affidavit of the officer in whose presence it was opened showing the reason for opening the same.

(c) At any time prior to the sale, destruction or other disposition of the contents thereof, the person in whose name such package stands may require the delivery thereof upon payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or the contents thereof,

including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any. If the principal of, or interest, income, or dividends on any bonds, stock certificates, promissory notes, choses in action or other securities contained in such package, is or becomes due and payable while it is in the possession of such corporation, it may at its election collect such principal, interest, income or dividends, and from the proceeds thereof may deduct all such sums due for rental and other charges, until the time of such collection. The balance, if any, of the amount or amounts so collected shall be disposed of as hereafter in paragraph (e) of this subdivision and in subdivision five hereof provided.

(d) After the expiration of one year from the time of mailing the notice in paragraph (a) of this subdivision described, such corporation may apply to the supreme court for an order authorizing such corporation to sell, destroy or otherwise dispose of the contents of such package. In a proper case, the court shall make such order upon such terms and conditions as justice may require. The application for an order of the supreme court pursuant to this paragraph shall be made upon an order to show cause, which shall provide that notice thereof to the person in whose name such package stands and to any other person claiming or appearing to have an interest therein, shall be published, mailed or given in such other manner as the court may prescribe. Whenever, pursuant to the provisions of this paragraph, a corporation is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for non-payment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents thereof, including the charges and expenses described in paragraph (c) hereof. Such power to sell, or the power to destroy or otherwise dispose of, when authorized pursuant to the provisions of this paragraph, shall be deemed to include the power to sell, destroy or otherwise dispose of, as the case may be, any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property contained in any package, regardless of whether or not it shall appear from such securities or properties that the person in whose name the package stands, possesses title to or interest in such securities or other properties, or power to transfer such title or interest, and any sale of such securities or properties, pursuant to this paragraph, shall vest good title thereto in the purchaser thereof.

(e) From the proceeds of any sale, such corporation shall deduct all rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale, including the charges and expenses described in paragraph (c) hereof, and the expenses of sale. The balance of such proceeds, if any, shall be credited to the person in whose name such package stood and, unless sooner paid over to the superintendent pursuant to subdivision five hereof, shall be paid over to such person, his assignee or legal representative on satisfactory evidence of identity.

(f) The provisions of this subdivision do not affect or preclude any other remedy by action or otherwise for the enforcement of the claims or rights of such corporation against the person in whose name any property, or any safe, vault, box, package, parcel or receptacle stands, nor affect, nor bar the right of such corporation to recover, before sale, any debt or claim due it or, after sale, so much of the debt or claim as shall not be paid by the proceeds of the sale.

(g) The procedure prescribed in this subdivision may be followed by any corporation winding up its affairs in accordance with the provisions of this section, notwithstanding the fact that such corporation may have commenced proceedings to open, or may have opened, any safe, vault or box for non-payment of rental in accordance with other provisions of this chapter and notwithstanding the contents of any notice that may have been given by such corporation in accordance with any requirement of this section.

5. When such corporation shall have given the notice to creditors and depositors to present their claims as prescribed in the order entered in accordance with the provisions of subdivision four hereof, and shall have paid all its debts and obligations for which a legal claimant has been found, and shall have complied with the provisions of subdivision four-a hereof, it shall, before applying to court for a release upon final accounting or for a final order of dissolution, make a verified transcript or statement from its books of the names of all depositors, creditors, stockholders, shareholders, owners of personal property in the custody or possession of such corporation as bailee, depositary for hire or otherwise, or lessees of any safe, vault or box, who have not claimed or have not received the deposits, debts, dividends, interest balances or other amounts due them, and shall file such transcript or statement with the superintendent

together with all identifying information, including, in the case of unclaimed proceeds of any sale pursuant to subdivision four-a hereof, a certified copy of the inventory, and an affidavit showing compliance with the provisions of said subdivision, a list of the articles sold, the price or prices obtained therefor, and the amount or amounts deducted and retained from the proceeds and such corporation shall thereupon pay over such unclaimed amounts to the superintendent as trustee for the persons entitled to receive them, as provided in article two of this chapter. [FN1]

6. Upon the petition of such corporation showing

(a) that all its debts and obligations have been discharged except those for which no legal claimant has been found,

(b) that notice was given to creditors and depositors to present their claims as prescribed by the court and that any period prescribed by the court for the presentation of such claims has expired,

(c) that the provisions of subdivision four-a hereof, if applicable, have been complied with and

(d) that all unclaimed amounts referred to in subdivision five hereof have been paid over to the superintendent, and on notice to the comptroller and the superintendent and such further notice as the court may prescribe, the court may, on such terms as justice requires, make an order affirming such disposition of such unclaimed amounts and declaring such corporation dissolved and its corporate existence terminated.

7. On filing with the superintendent a certified copy of the order of dissolution described in the last preceding subdivision of this section, the corporation shall cease to exist.

8. Unless the banking board by a three-fifths vote of all its members shall otherwise provide, any corporate banking organization that, pursuant to an agreement, sells or conveys more than fifty per centum of its assets without the written approval of the superintendent shall take the proceedings for voluntary dissolution herein prescribed and, within six months from the date of such sale or conveyance, shall file with the superintendent a certified copy of the closing order in the form prescribed by subdivision four of this section. The corporate banking organization, upon making written application to the superintendent for approval of the sale or conveyance of more than fifty per centum of its assets, shall pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter. If a closing order is required to be filed pursuant to this subdivision and such order is not filed within the time prescribed, the superintendent shall have the power, in his or her discretion, to take possession of the business and property of such corporation and proceed with the liquidation thereof under the provisions of this article.

9. If the superintendent shall certify that any corporate banking organization is deemed by him to have abandoned and forfeited its charter by non-user and to be virtually in process of liquidation, such corporation, if its assets have a value at least equal to its liabilities, exclusive of any liability to shareholders or stockholders, as such, shall take the proceeding for voluntary dissolution herein prescribed and, within six months from the date of such certificate, shall file with the superintendent a certified copy of the closing order in the form prescribed by subdivision four of this section. If such order is not filed within the time prescribed, the superintendent shall have the power, in his discretion, to take possession of the business and property of such corporation and proceed with the liquidation thereof under the provisions of this article.

10. (a) Upon the petition of the superintendent showing

(1) that any corporate banking organization has ceased to transact business, or has commenced but failed to complete proceedings for its voluntary dissolution in accordance with the banking law, or for any other reason is deemed by the superintendent to have abandoned and forfeited its charter by non-user, and

(2) that all of its assets have been distributed, or that the superintendent has no knowledge as to the existence of any

such assets, the supreme court in the judicial district where such banking organization maintained its principal place of business may make an order declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the superintendent the existence of such corporation shall cease and determine.

(b) If the petition of the superintendent shall show, in addition to the allegations required by the provisions of subparagraph (1) of paragraph (a) of this subdivision, that such banking organization

(1) has undistributed assets and it appears that in the opinion of the superintendent the cost of taking possession of and liquidating such assets in accordance with the provisions of this article will exceed the fair value of such assets, and

(2) has failed, for a period of two years after ceasing to transact business or commencing proceedings for its voluntary dissolution, to complete such proceedings or to produce proof satisfactory to the superintendent that it has complied with or is in the process of complying with the provisions of the banking law, the court may, upon such notice as it may prescribe, make an order declaring such corporation dissolved and the corporate existence thereof terminated, and further declaring that such assets have been abandoned and providing for the payment, delivery or transfer thereof to the superintendent in such manner and at such time as the court may direct. Upon the filing of a certified copy of such order in the office of the superintendent the existence of such corporation shall cease and determine. At any time within six months after the entry of such order, the court may upon good cause shown and upon such terms as justice may require, vacate or modify such order. At the expiration of such six-month period or such further period as the court may prescribe, the superintendent shall sell, redeem or otherwise dispose of such assets and from the proceeds thereof may retain and pay all costs, disbursements and legal fees allowed by the court and any assessments, penalties or forfeitures incurred by such banking organization under the banking law. The remaining proceeds if any shall forthwith be paid into the state treasury for the use and benefit of the state.

11. (a) Any foreign banking corporation which has been licensed pursuant to article two of this chapter [FN1] to engage in business in this state, including any such corporation whose license has been surrendered or revoked, may, if it so desires, take proceedings for the voluntary liquidation of its business and property in this state in accordance with the provisions of paragraph (b) of this subdivision; but no such liquidation shall be commenced while the superintendent is in possession of such business and property unless such corporation shall have first received the written approval of the superintendent. In any such liquidation the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies or branch or branches shall be accorded the same preference accorded to similar claims in a liquidation under subdivision four of section six hundred six of this article.

(b) To effect such a voluntary liquidation, a foreign corporation shall subscribe, acknowledge and file with the superintendent at his office a written notice of its intention so to liquidate, which notice shall specify the date of commencement of the liquidation, and upon such date, such corporation shall forthwith cease to transact business in this state if it has not already done so, and shall proceed to wind up its affairs in this state. Within thirty days after such date, such corporation shall make application to the supreme court, after due notice to the superintendent, for an order prescribing the notice to be given to the preferred creditors hereinabove described to present their claims for payment. Every such corporation shall, in the course of such liquidation, comply with the provisions of subdivisions four-a, five and six of this section, except that an order entered pursuant to subdivision six of this section shall affirm the disposition of the unclaimed amounts therein referred to and shall authorize the turn-over of all of the assets remaining after payment of the preferred creditors to the principal office of such corporation. Within five days after the making of any order described in this paragraph a certified copy thereof shall be filed in the office of the superintendent.

(c) Any foreign banking corporation which has been licensed pursuant to article two [FN1] of this chapter to engage in business in this state, which shall liquidate its business and property in this state without electing to comply with the provisions of paragraphs (a) and (b) of this subdivision, shall, upon completion of the liquidation, make a verified transcript or statement from its books of the names of all creditors whose claims arise out of transactions had by them with its New York agency or agencies, or its New York branch or branches and of all owners of personal property in

the custody or possession of such agency or agencies or branch or branches as bailee, depositary for hire or otherwise, who have not claimed or have not received the debts or other amounts due them, and shall file such transcript or statement with the superintendent together with all identifying information, including, in the case of unclaimed proceeds of any sale of personal property, a list of the articles sold, the price or prices obtained therefor, and the amount or amounts deducted and retained from the proceeds, and such corporation shall thereupon pay over such unclaimed amounts to the superintendent as trustee for the persons entitled to receive them, as provided in article two of this chapter. Any such corporation so liquidating its business and property in this state may, if it so desires, follow the procedures for the disposition of personal property in the custody or possession of, and exercise the same powers and privileges with respect thereto accorded to, banking organizations in subdivision four-a of this section. To effectuate the purposes of this chapter, the superintendent may impose additional requirements and procedures for the foreign banking corporation to follow with respect to the dissolution of the licensed office.

(d) For the purposes of this subdivision, the words “debts”, “obligations” and “deposits”, as used in subdivisions four-a, five and six of this section, shall be deemed to refer to the preferred claims hereinabove described, the words “creditors” and “depositors” shall be deemed to refer to the owners of such preferred claims, the references in subdivisions four-a and five of this section to the order entered in accordance with subdivision four of this section shall be deemed to refer to the like order entered in accordance with the provisions of this subdivision, and, except when the context shall otherwise require, the word “corporation” shall be deemed to refer to the New York agency or agencies, or branch or branches and the word “officer” shall include the agent or other person in charge of such agency or agencies and any person in charge of or who is an officer of such branch or branches or of the liquidation.

12. If the superintendent shall at any time find that any of the reasons enumerated in section six hundred six of this article for takeover of the business and property of a banking organization or of the business and property in this state of a foreign banking corporation shall exist, he may, in his discretion, forthwith take possession of such business and property in accordance with the provisions of such section notwithstanding that such banking organization or corporation may have theretofore commenced proceedings for the voluntary liquidation of such business and property in accordance with this section.

CREDIT(S)

(L.1914, c. 369; formerly § 486. Amended L.1936, c. 475, § 6. Renumbered § 605 and amended L.1938, c. 684, § 102. Amended L.1940, c. 481, §§ 5, 6; L.1941, c. 174, §§ 1, 2; L.1944, c. 40, § 2; L.1944, c. 52, § 9; L.1946, c. 73, §§ 1 to 4; L.1950, c. 44, §§ 2, 3; L.1952, c. 64; L.1956, c. 464, § 7; L.1960, c. 553, §§ 30 to 32, eff. Jan. 1, 1961; L.1981, c. 93, § 1; L.1984, c. 1, § 16; L.2000, c. 567, §§ 3 to 5, eff. Dec. 8, 2000; L.2006, c. 59, pt. O, § 60, eff. May 11, 2006; L.2007, c. 154, § 2, eff. July 3, 2007.)

[FN1] Banking Law § 10 et seq.

Current through L.2011, chapters 1 to 8.

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness

Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 605-a. Transfer of deposit liabilities of bank or trust company; sale or pledge of assets to facilitate such transfer

1. A bank or trust company may, pursuant to a plan approved by the superintendent, enter into an agreement with another bank or trust company, whereby its liabilities to depositors will be assumed by such other bank or trust company. To facilitate the consummation of such plan and agreement, such bank or trust company may borrow money from the Federal Deposit Insurance Corporation and pledge all or any part of its assets as security for the money so borrowed, or it may sell all or any part of its assets to Federal Deposit Insurance Corporation and the money so borrowed or realized with or without any other assets belonging to such bank or trust company, may be transferred by it to such other bank or trust company, in consideration of the latter's agreement to assume and pay the deposit liabilities of the former. If the superintendent shall thereafter take possession of the business and property of such bank or trust company, pursuant to this article, the validity of a claim against such bank or trust company which was in existence when such plan was consummated and remains unpaid shall be determined pursuant to the provisions of section six hundred twenty to six hundred twenty-five inclusive of this article as though such plan had not been consummated. Nothing in this section nor in any plan consummated pursuant to this section shall be deemed to require allowance of any claim if such claim would not otherwise be allowable in the liquidation proceedings. If such claim is allowed or ultimately established, the owner thereof shall be entitled to dividends on his claim as though such plan had not been consummated, and as though the assets of such bank or trust company had been taken over for liquidation immediately prior to any sale, pledge or transfer made pursuant to such plan. If such bank or trust company in liquidation does not have sufficient other assets to pay such dividends, the deficiency shall be paid from the proceeds of the sale or liquidation of the assets sold or pledged by such bank or trust company to Federal Deposit Insurance Corporation. If such proceeds prove insufficient to pay such deficiency in full, any remaining deficiency shall be paid from the proceeds of the sale or liquidation of the assets transferred by such bank or trust company to such other bank or trust company, exclusive of cash representing the proceeds of a sale to or a loan from Federal Deposit Insurance Corporation. The superintendent shall take such action as he shall deem necessary and appropriate to protect the interests of the owner of any such claim, but he shall not be required to obtain possession of any of the assets from the proceeds of which the deficiency in dividends upon such claim is payable, unless it shall appear that the amount required for the payment of such deficiency is not otherwise available. The superintendent may, subject to the approval of the supreme court in the judicial district where the principal office of such bank or trust company is located, enter into an agreement with the Federal Deposit Insurance Corporation and the bank or trust company to which any assets of such bank or trust company have been transferred, or either of them, whereby payments shall be made to him as trustee for the benefit of the person or persons entitled thereto from time to time as cash is realized from the sale or liquidation of the assets from the proceeds of which claims are payable. If such agreement is approved by the supreme court, after notice of a kind which the court deems to be adequate to all persons whose interests, in the opinion of the court, may be affected thereby, such agreement shall be binding upon all such persons. No action may be brought by any such person to enforce payment of his claim unless it be clearly shown that the superintendent has refused or failed to take necessary and appropriate action to protect the interests of such person. No sale, conveyance or transfer by a bank or trust

company of all or any part of its assets shall be deemed to have been made pursuant to the provisions of this section unless the plan approved by the superintendent shall expressly so state. Nothing contained in this section shall be deemed to repeal, limit, modify or otherwise affect any right or power of a bank or trust company to sell, convey or transfer all or any part of its assets pursuant to any other provision of law.

2. A bank or trust company assuming the deposit liabilities of another bank or trust company in connection with a plan pursuant to this section may issue preferred shares which, to the extent permitted by the superintendent, may have a retirable value greater than the amount received in payment for such shares.

CREDIT(S)

(Added L.1940, c. 253, § 5. Amended L.1941, c. 157; L.1964, c. 849, § 67, eff. Sept. 1, 1964.)

Current through L.2011, chapters 1 to 8.

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McKinney's Consolidated Laws of New York Annotated Currentness

Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 606. When superintendent may take possession of banking organization; when possession may be surrendered

1. The superintendent may, in his discretion, forthwith take possession of the business and property of any banking organization whenever it shall appear that such banking organization:

- (a) Has violated any law;
- (b) Is conducting its business in an unauthorized or unsafe manner;
- (c) Is in an unsound or unsafe condition to transact its business;
- (d) Cannot with safety and expediency continue business;
- (e) Has an impairment of its capital; or, in the case of a mutual savings and loan association or credit union, has assets insufficient to pay its debts and the amount due members upon their shares;
- (f) Has suspended payment of its obligations; or, in the case of a mutual savings and loan association, has failed for sixty days after a withdrawal application has been filed with it by any shareholder to pay such withdrawal application in full;
- (g) Has neglected or refused to comply with the terms of a duly issued order of the superintendent;
- (h) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the department;
- (i) Has refused to be examined upon oath regarding its affairs.
- (j) Has neglected, refused or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

2. The superintendent may, in his discretion, and upon such conditions as may be approved by him, surrender possession and permit such banking organization to resume business.

3. When the superintendent shall have duly taken possession of the property and business of any such banking organization, he may hold such possession until its affairs are finally liquidated by him, unless he shall surrender pos-

session as provided in subdivision two of this section or be enjoined from continuing possession as provided in section six hundred seven of this article, or unless such banking organization shall, with the written approval of the superintendent, voluntarily wind up its affairs as provided in section six hundred five of this article.

4. (a) The superintendent may also, in his or her discretion, forthwith take possession of the business and property in this state of any foreign banking corporation that has been licensed by the superintendent under the provisions of this chapter, including, for the purposes of this article, any such corporation whose license has been surrendered or revoked, upon his or her finding that any of the reasons enumerated in subdivision one of this section exist with respect to such corporation or that it is in liquidation at its domicile or elsewhere or that there is reason to doubt its ability or willingness to pay in full the claims of the creditors hereinbelow described. Title to such business and property shall vest by operation of law in the superintendent and his or her successors forthwith upon taking possession. Thereafter the superintendent shall liquidate or otherwise deal with such business and property in accordance with the provisions of this chapter applicable to the liquidation of banking organizations, except that the superintendent may deal with such business and property and prosecute and defend any and all actions relating thereto in his or her own name as superintendent. Only the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies, or with its New York branch or branches, shall be accepted by the superintendent for payment out of such business and property in this state as provided in this article. Acceptance or rejection of such claims by the superintendent shall not prejudice such creditors' rights to otherwise share in the assets of such corporation. The following claims shall not be accepted by the superintendent for payment out of such business and property in this state: (1) claims which would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate and independent legal entity; and (2) amounts due and other liabilities to other offices, agencies or branches of, and affiliates of, such foreign banking corporation.

(b) Whenever the accepted claims, together with interest thereon, if interest was paid, and the expenses of the liquidation have been paid in full or properly provided for, the superintendent upon the order of the supreme court shall turn over the remaining assets to, in the first instance, other offices of the foreign banking corporation that are being liquidated in the United States, upon the request of the liquidators of those offices, in amounts which the liquidators of those offices demonstrate to the superintendent are needed to pay the claims accepted by those liquidators and any expenses incurred by the liquidators in liquidating those other offices of the foreign banking corporation. After such payments, if any, have been made, any assets of the foreign banking corporation remaining in the hands of the superintendent shall be turned over to the principal office of such foreign banking corporation, or to the duly appointed domiciliary liquidator or receiver of said foreign banking corporation. Dividends and other amounts remaining unclaimed or unpaid in the hands of the superintendent for six months after such turn-over shall be deposited by him or her as provided in article two of this chapter.

(c) As used in this subdivision the phrase "business and property in this state" includes, but is not limited to, all property of the foreign corporation, real, personal or mixed, whether tangible or intangible, (1) wherever situated, constituting part of the business of the New York agency or branch and appearing on its books as such, and (2) situated within this state whether or not constituting part of the business of the New York agency or branch or so appearing on its books.

(d) For the purposes of this subdivision, the words "debts", "obligations", "deposits" and other similar terms as used in subsequent sections of this article, shall be deemed to refer to the claims that the superintendent shall accept pursuant to paragraph (a) of this subdivision, the words "creditors" and "depositors" shall be deemed to refer to the owners of such accepted claims and, except when the context shall otherwise require, the terms "banking organization" and "corporation" shall be deemed to refer to the New York agency or agencies or branch or branches and the word "officer" shall include the agent or other person in charge of such agency or agencies and any person in charge of or who is an officer of such branch or branches. As used in this subdivision, (i) "affiliate" shall mean any person, or group of persons acting in concert, that controls, is controlled by or is under common control with such foreign banking corporation and (ii) "control" means any person, or group of persons acting in concert, directly or indirectly, owning, controlling or holding with power to vote, more than fifty percent of the voting stock of a company, or having the

ability in any manner to elect a majority of the directors of a company, or otherwise exercising a controlling influence over the management and policies of a company as defined by the superintendent by regulation. For purposes of this subdivision, the term “person” shall mean a corporation, unincorporated association, partnership, or any other entity or individual.

5. The term “banking organization” as used in this and subsequent sections of this article shall be deemed to include a corporation which has engaged in any business or other activity prohibited by section one hundred thirty-one of this chapter, and an unincorporated association, partnership, fiduciary or individual who has engaged in any business or other activity prohibited by section one hundred eighty of this chapter.

6. (a) In the case of the liquidation of an investment company by the superintendent, accepted claims, amounts due and other liabilities owed to affiliates of such investment company shall be paid only after all accepted claims, amounts due and other liabilities owed have been fully paid to such creditors and other claimants of the investment company that are not affiliates of such investment company.

(b) For the purposes of this subdivision, (i) “affiliate” shall mean any person, or group of persons acting in concert, that controls, is controlled by or is under common control with such investment company, and (ii) “control” means any person, or group of persons acting in concert, directly or indirectly, owning, controlling, or holding with power to vote, more than fifty percent of the voting stock of a company, or having the ability in any manner to elect a majority of the directors of a company, or otherwise exercising a controlling influence over the management and policies of a company as defined by the superintendent by regulation. For purposes of this subdivision, the term “person” shall mean a corporation, unincorporated association, partnership, or any other entity or individual.

CREDIT(S)

(L.1914, c. 369; formerly § 57. Amended L.1930, c. 664, § 1; L.1930, c. 678, § 14; L.1932, c. 399, § 2. Renumbered § 606 and amended L.1938, c. 684, § 103. Amended L.1944, c. 40, § 3; L.1946, c. 65, § 1; L.1947, c. 95, § 1; L.1949, c. 43, § 1; L.1950, c. 44, § 4; L.1952, c. 63; L.1953, c. 127; L.1958, c. 880, § 5; L.1959, c. 320; L.1960, c. 553, §§ 33 to 35, eff. Jan. 1, 1961; L.1984, c. 1, § 17; L.1993, c. 496, § 7; L.2000, c. 567, § 6, eff. Dec. 8, 2000.)

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Banking Law (Refs & Annos)

☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 607. Manner and time within which taking possession may be tested**

At any time within ten days after the superintendent has taken possession of the property and business of any banking organization such banking organization may apply to the supreme court in the judicial district in which its principal office is located, for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession.

CREDIT(S)

(L.1914, c. 369; formerly § 60. Amended L.1932, c. 399, § 2. Renumbered § 607 and amended L.1938, c. 684, § 104, eff. June 30, 1938.)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **[§ 608. Repealed by L.1947, c. 95, § 2, eff. March 10, 1947]**

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Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 609. Resumption of business by bank, trust company or industrial bank; retirement of certificates; applicability to stock-form savings banks and stock-form savings and loan associations

1. Any bank, trust company, stock-form savings bank or stock-form savings and loan association of which the superintendent has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted by the superintendent, in his discretion and subject to such conditions as may be approved by him, to resume business in accordance with the provisions of this section.
2. No bank, trust company or industrial bank permitted by the superintendent to resume business in accordance with the provisions of this section shall, without previously obtaining the written permission of the superintendent, pay, on account of any deposit made or debt incurred before such restrictions were imposed or before the superintendent took possession of such bank, trust company or industrial bank, more than that proportion of eighty per centum of the total value of its sound assets, as determined by the superintendent, which such deposit or debt bears to the total of the deposits and debts of such bank, trust company or industrial bank at the time of resuming business: provided that nothing contained in this section shall affect any preference created by any law of this state for the benefit of any depositor or creditor or impair the rights of any secured depositor or creditor in any assets lawfully pledged or assigned as such security. For the purposes of this section, the holder of a judgment against any such bank, trust company or industrial bank for the payment of money arising out of a cause of action arising prior to such resumption of business, whether such judgment was recovered prior or subsequent to such resumption of business, shall have the same rights as if he were a depositor having a balance equal to the amount of such judgment at the time such restrictions were imposed or at the time the superintendent took possession of such bank, trust company or industrial bank. The superintendent shall prepare for each such bank, trust company or industrial bank a list of the assets which, in his judgment, are sound and the value thereof as determined by him.
3. Such bank, trust company or industrial bank shall, immediately upon resuming business, issue to its depositors and creditors non-negotiable transferable certificates, in a form approved by the superintendent, representing the part of its deposits and debts which it is not authorized to pay at that time under the provisions of subdivision two of this section. Such certificates shall bear interest, if any, at a rate not in excess of three per centum per annum.
4. The superintendent shall from time to time determine the excess of the value of the sound assets of such bank, trust company or industrial bank over the total of the principal amount of such certificates outstanding and of the deposits and debts of such bank, trust company or industrial bank not represented by such certificates, including deposits made and debts incurred after resuming business. The amount by which such excess is greater than the excess of the value of the sound assets of such bank, trust company or industrial bank, determined as provided in subdivision two of this section, over its total deposits and debts at the time of resuming business may, unless the superintendent disapproves, be paid pro rata on account of the principal due on such certificates or, if the principal has been paid in full, on account of the interest, if any, due thereon. No such bank, trust company or industrial bank shall, without previously obtaining

the written permission of the superintendent, make any other payment on account of the principal or interest of such certificates.

5. No dividends shall be paid on the stock of such bank, trust company or industrial bank while any such certificates are outstanding, unless, having previously secured the written permission of the superintendent to pay such certificates, it shall set aside and maintain a sum sufficient for the payment of all such outstanding certificates and the interest, if any, accrued thereon and shall publish once a week for two calendar weeks in a newspaper published in the county in which its principal office is located, notice to the effect that it will pay all such certificates and the interest, if any, accrued thereon upon due presentation for payment. If, thereafter, any such certificate together with all interest, if any, accrued thereon, shall not be paid when so presented, the authority of such bank, trust company or industrial bank to pay such dividends shall cease.

6. So long as any of such certificates are outstanding, every holder of such a certificate shall have the same right to notice of all regular or special meetings of the stockholders of such bank, trust company or industrial bank and to attend and to vote in person or by proxy at such meetings as would a holder of stock of the par value of the unpaid principal amount of such certificate, except that no holder of a certificate or certificates shall be entitled to vote upon any change in respect to shares or capital stock pursuant to title eight of article fifteen [FN1] or to receive notice of or attend a meeting of stockholders specially called for that purpose. Within sixty days after such bank, trust company or industrial bank has resumed business a meeting of its stockholders and holders of such certificates shall be called upon notice prescribed by the superintendent. At such meeting directors shall be elected who shall succeed the former directors, and the directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves.

7. If the superintendent shall retake possession of the business and property of such bank, trust company or industrial bank while any such certificates are still outstanding and liquidate its business as elsewhere provided in this chapter, deposits and debts not represented by such certificates, including deposits made and debts incurred after resuming business, shall be entitled to payment of principal and interest in priority to the payment of the principal and interest of such certificates.

8. (a) A plan for the retirement of certificates issued or made available by a bank, trust company or industrial bank pursuant to the provisions of this section may be promulgated in accordance with this subdivision eight in any case where the value of all the assets of such bank, trust company or industrial bank as determined by the superintendent is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates so issued or made available by such bank, trust company or industrial bank. Such plan may be promulgated by such bank, trust company or industrial bank or by the holders of ten per centum or more in principal amount of all such outstanding certificates or the representative or representatives of such holders.

(b) Such plan may provide for any one or more of the following:

(1) The retirement of certificates by the issuance in exchange therefor of shares of capital stock or debentures or both of such bank, trust company or industrial bank;

(2) The issuance of preferred stock of such bank, trust company or industrial bank and the sale of such preferred stock for cash or its exchange for real or personal property or for outstanding capital notes, debentures or other obligations of such bank, trust company or industrial bank;

(3) The issuance of fractional shares of capital stock of such bank, trust company or industrial bank in exchange for certificates or portions thereof in unpaid amount insufficient to permit the exchange thereof for a full share of capital stock. Such fractional shares of capital stock shall have no voting rights, but, when combined with other fractional

shares in sufficient amount, shall be convertible into a full share or shares of capital stock;

(4) The transfer into a separate account upon the books of such bank, trust company or industrial bank or to a separate corporation, of any assets to be liquidated for the pro rata benefit of certificate holders and the issuance to certificate holders of evidences of participation in such assets if transferred into a separate account upon the books of such bank, trust company or industrial bank, or of stock or obligations or both of such separate corporation, if such assets are transferred to a separate corporation;

(5) The organization of a corporation to issue its stock or obligations or both in exchange for certificates and for the exchange of certificates so acquired by such corporation for shares of the capital stock or debentures or both of such bank, trust company or industrial bank;

(6) The amount of capital stock which such bank, trust company or industrial bank shall have upon the plan becoming effective, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each share.

In addition to provisions herein specifically authorized to be contained in a plan promulgated pursuant to this subdivision, such plan may also contain any other provisions deemed necessary or convenient to effectuate the general purpose or purposes of the plan.

(c) The person or persons promulgating such plan shall first submit it to the superintendent for his approval. If the plan is approved by the superintendent, such person shall within sixty days of such approval submit it to the supreme court in and for the county in which the principal office of such bank, trust company or industrial bank is located, together with an application for its approval. Such application shall set forth such facts as may be necessary to enable the court to determine the fairness of such plan and shall be made upon an order to show cause which shall provide that notice thereof of a kind which the court deems to be adequate shall be given by such bank, trust company or industrial bank to all holders of such certificates and all other persons whose interests, in the opinion of the court, may be affected by such plan. If the issue is raised in any proceeding involving a plan promulgated pursuant to this subdivision, a certificate executed by the superintendent and filed with the court shall be presumptive evidence of the fact that the value of all of the assets of such bank, trust company or industrial bank is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates issued or made available by such bank, trust company or industrial bank.

(d) The superintendent or the bank, trust company or industrial bank or any person or persons authorized to promulgate a plan hereunder may propose and submit to the court an alternative plan or a modification or modifications of any plan before the court. The court may modify any such plan or may propose a new or alternative plan, provided, however, that a modification or modifications, whether proposed by the court or by any other person or persons, may be made only after a hearing upon notice to all holders of certificates and all other persons whose interests, in the opinion of the court, may be affected thereby, and subject to the right of any person who shall previously have consented to such plan to withdraw such consent within a period to be prescribed by the court and after such notice as the court may direct. If any person having such right of withdrawal shall not withdraw within the period so prescribed he shall be deemed to have approved such plan as so modified.

(e) After the hearing or hearings above provided the court shall by order approve a plan, with or without modifications, or shall reject all such plans, provided, however, that no order made pursuant to this paragraph approving such plan shall be made or entered unless such plan, in final form, shall first have been approved in writing by the superintendent and such written approval shall have been filed in the proceeding. If at the time of making the order approving such plan, the court is satisfied that the holders of two-thirds in amount of such certificates have approved such plan, the order of the court shall recite such fact and shall declare that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company

or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. If at the time of making such order, such plan shall not have been approved by the holders of two-thirds in amount of such certificates, such order shall provide that upon satisfactory proof of the fact that the holders of two-thirds in amount of such certificates shall have approved the same, a further order may be entered ex parte declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision.

(f) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such plan shall become binding upon the holders of all certificates of such bank, trust company or industrial bank and all such holders shall be conclusively deemed to have consented to all the terms and conditions of such plan whether or not all of such holders shall actually have consented thereto and whether or not all of them shall have received notice thereof or of the hearing thereon hereinbefore provided.

(g) Every executor, administrator, trustee, guardian, committee, conservator, receiver, or other fiduciary, and every public and private corporation or association, and every political and public instrumentality or body, including, but not by way of limitation of the generality of the foregoing, boards of education and school districts and other special districts, is hereby authorized and empowered to approve and accept a plan promulgated pursuant to this subdivision and to execute and deliver such papers and documents as may be necessary or proper to evidence such approval and acceptance, and shall not be subject to any liability whatsoever for any such approval or acceptance or any exchange of certificates for stock or other securities or both made pursuant thereto.

(h) A plan promulgated pursuant to this subdivision may be effectuated even though it has not been expressly approved by the holders of two-thirds in amount of all outstanding certificates, provided, as an alternative to such express approval, the provisions of this paragraph have been complied with. After the plan is approved by the superintendent as provided by paragraph (c) of this subdivision, the person or persons promulgating such plan shall file a copy thereof with the clerk of the court and shall prepare and mail to each of the holders of such certificates and to each of the holders of stock of the bank, trust company or industrial bank, addressed by registered mail to him, postage prepaid, to his last known address as the same appears on the records of the bank, trust company or industrial bank, a summary of such plan together with a notice stating in substance that such plan will be presented to the supreme court in and for the county in which the principal office of the bank, trust company or industrial bank is located, and designating a date, which date shall not be less than thirty days after the mailing of such notice, when such court will consider such plan and hear any objection thereto on the part of any holder of a certificate or of stock. Such notice shall also be published by the person or persons promulgating such plan once, at least twenty days before said date, in a daily newspaper of general circulation published in the county where such hearing is to be had and if no such daily newspaper is published in such county, then such notice shall be published in a newspaper of general circulation in said county. Upon the return of such notice or any adjourned date or dates thereof, the court shall hear the parties interested therein and may accept proof in affidavit form or otherwise as to any facts and circumstances material thereto. The court upon proof by affidavit that the provisions hereof with respect to mailing and publication have been fully complied with shall thereupon approve, modify or disapprove such plan, but in no event shall any such plan, with or without modifications, be approved by the court unless the court deems such plan fair and equitable to the holders of certificates and unless such plan, in final form, shall first have been approved in writing by the superintendent, and such written approval shall have been filed in the proceeding; or if written dissent therefrom, duly executed and acknowledged, shall be filed with the clerk of the court prior to such return date, or prior to such other date as may be fixed by the court, by the holders in the aggregate of more than thirty-three and one-third per centum of the face amount of the certificates affected by such plan. All holders of certificates who have not dissented from the plan in the manner provided by this paragraph and prior to the return date or such other date as may be fixed by the court shall be conclusively deemed to have assented thereto. Such plan shall contain a provision in respect of certificate holders dissenting thereto, to the effect that adequate protection will be provided for the realization by them of the value of their certificates by such method as will in the opinion of the court, under and consistent with the circumstances of the particular case, be equitable and fair to

them. When such plan, with or without modifications, shall be approved by the court, the court shall make an order reciting such approval and declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. The appellate court to which an appeal is taken by any dissenting certificate holder or by any stockholder from any action by the court pursuant to this section shall have the right to impose upon the appellant as part of the costs of the appeal, reasonable fees of counsel for the respondent, and such appellate court may also, in its discretion, require bond therefor before entertaining any such appeal.

(i) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such steps shall be taken by the superintendent and all other persons, and all acts shall be done as may be required by such plan and as may be necessary or desirable to make such plan operative. Within ten days after the entering of such order, the superintendent shall issue an order pursuant to article two of this chapter [FN2] directing that such bank, trust company or industrial bank shall forthwith make good the impairment of its capital. Upon receipt of such order, the directors of the bank, trust company or industrial bank shall give notice to each stockholder of such requisition and of the amount of the assessment he must pay, which amount shall be the aggregate par value of his shares. Such notice shall be mailed to each stockholder at his address appearing on the records of the bank, trust company or industrial bank or shall be served personally upon him. Notwithstanding any provision of section one hundred fourteen or section three hundred six of this chapter, all outstanding stock certificates of the bank, trust company or industrial bank shall be canceled of record not less than thirty days after notice of assessment is given to stockholders as herein provided, and thereupon such stock certificates shall be null and void for all purposes and the rights of the holders thereunder shall cease and determine; provided, however, that each stockholder who pays the full amount of such assessment within thirty days after notice of assessment is given as herein provided shall receive, in lieu of the stock on account of which such assessment was paid, new stock in the amount to which he would be entitled if he held certificates issued by such bank, trust company or industrial bank pursuant to the provisions of this section in an aggregate unpaid principal and interest amount equal to the assessment so paid.

(j) Not less than thirty nor more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall, if the plan so provides, cause any assets of such bank, trust company or industrial bank which are to be liquidated for the pro rata benefit of certificate holders, to be set aside in a special account upon the books of such bank, trust company or industrial bank or transferred to a separate corporation.

(k) Upon the completion of the acts required to be done pursuant to paragraph (i) and paragraph (j) of this subdivision and not more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall execute in triplicate a certificate declaring such plan to be effective and stating the amount of capital stock which such bank, trust company or industrial bank shall thereafter have, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each such share. The amount of capital stock stated in such certificate shall be not less than the amount of capital stock required to be issued to certificate holders pursuant to such plan, plus the amount of capital stock required, pursuant to paragraph (i) of this subdivision, to be issued to stockholder who shall have paid the full amount of the assessments levied pursuant to such paragraph (i). The amount of capital stock, the number of shares and the par value of each such share as stated in such certificate shall be the amount of capital stock, the number of shares and the par value thereof which such bank, trust company or industrial bank shall thereafter be authorized to have, provided that nothing herein contained shall be deemed to limit the power of any such bank, trust company or industrial bank subsequently to change the amount of its capital stock, the number of its shares or the par value of its shares pursuant to subdivision two of section eight thousand one. One of such triplicate certificates shall be transmitted forthwith by the superintendent to such bank, trust company or industrial bank, another shall be filed in the office of the superintendent and the third shall be filed by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank. Upon such filing in the office of the county clerk, the plan shall become effective and all certificates theretofore issued by such bank, trust company or industrial bank pursuant to the provisions of this section

shall be null and void and shall not be deemed to be outstanding for any purpose. Thereupon such bank, trust company or industrial bank shall issue and make available to the holders of such certificates shares of stock or debentures or both of such bank, trust company or industrial bank, and if the plan so provides, evidences of participation in the assets aside in a special account or stock or other securities or both of a separate corporation, in the proportions and amounts specified in such plan.

(l) Within sixty days after a plan pursuant to this subdivision has become effective with respect to any bank, trust company or industrial bank, there shall be called in accordance with its by-laws a meeting of its stockholders who shall elect directors who shall succeed the former directors. The directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves. Notwithstanding the requirements as to ownership of capital stock contained in section one hundred sixteen [FN3] or section three hundred three [FN4] of this chapter, the directors of such bank, trust company or industrial bank holding office at the time that such plan becomes effective may continue to hold office as directors, until their successors are elected and shall have qualified.

(m) The supreme court in and for the county in which is located the principal office of such bank, trust company or industrial bank is hereby vested with jurisdiction and authority to determine the fairness of, and to approve or disapprove, any plan, or modification or modifications thereof, which may be promulgated hereunder and to determine the fairness of, and to approve or disapprove, the terms and conditions of the issuance and exchange of stock or other securities, or both, of any corporation for certificates issued pursuant to the provisions of this section and to make such orders and do such other things as may be required by this subdivision or as may be necessary or convenient to carry out the purposes hereof.

9. If there be in article fifteen of this chapter [FN5] a provision which conflicts with any provision of this section six hundred nine, the provision of this section six hundred nine shall prevail, and the conflicting provision of article fifteen [FN5] shall not apply in such case. If there be in article fifteen [FN5] a provision relating to a matter embraced in this section six hundred nine, but not in conflict therewith, both provisions shall apply.

CREDIT(S)

(Formerly § 61; L.1914, c. 369. Amended L.1932, c. 399, § 2; L.1933, c. 21; L.1935, c. 553; L.1936, cc. 748, 871; L.1937, c. 390, §§ 1, 2; L.1937, c. 619, §§ 21, 22. Renumbered § 609 and amended L.1938, c. 684, § 106. Amended L.1949, c. 805, § 11; L.1964, c. 849, §§ 68, 69, 73, eff. Sept. 1, 1964; L.1981, c. 115, § 14; L.1984, c. 1, § 18.)

[FN1] Banking Law § 8001 et seq.

[FN2] Banking Law § 10 et seq.

[FN3] Repealed. See, now, Banking Law § 6002 et seq.

[FN4] Repealed. See, now, Banking Law §§ 7001, 7002.

[FN5] Banking Law § 1001 et seq.

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☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 610. Resumption of business in accordance with plan of reorganization

The superintendent, in his discretion, may permit a corporation of which he has taken possession or which is operating on a restricted basis pursuant to regulations promulgated by duly constituted authority, to resume business in accordance with a plan of reorganization under which depositors and other creditors will receive less than the full amount of their claims and/or in partial payment thereof will receive certificates of beneficial interest in certain segregated assets and/or stock of such corporation, and under which stockholders will contribute their shares of capital stock and/or money in lieu of assessments upon such stock. In any such case in which the superintendent permits resumption of business pursuant to such a plan of reorganization, all depositors and creditors and stockholders of any such corporation, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan; provided, however, that the superintendent shall not permit a corporation to resume business in accordance with such a plan of reorganization unless it has been shown to his satisfaction that (1) such plan is fair and equitable to all depositors and other creditors and stockholders and is in the public interest and (2) that depositors and other creditors, representing at least eighty per centum in amount of its total deposits and other liabilities, exclusive of the claims of depositors and other creditors which will be satisfied in full under the plan of reorganization, and stockholders owning at least two-thirds of its outstanding capital stock, as shown by the books of the corporation, have consented in writing to such plan; provided further, that permission to resume business under any such plan of reorganization shall be granted by the superintendent only upon an order of the supreme court in and for the county in which the principal office of such corporation is located. The application for an order of the supreme court pursuant to this section shall be made upon an order to show cause which shall provide that notice thereof, of a kind which the court deems to be adequate and proper, be given to depositors, creditors and stockholders of such corporation.

CREDIT(S)

(Formerly § 61-a, added L.1933, c. 772, § 1. Renumbered § 610, L.1938, c. 684, § 107, eff. June 30, 1938.)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 611. Special deputies; assistants; counsel and other employees**

The superintendent may, by certificate, under his hand and the official seal of the department, appoint one or more special deputy superintendents as agent or agents to assist him in liquidating the business and affairs of any banking organization in his possession. The superintendent shall file such certificate in his office and shall cause a certified copy thereof to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located. He may delegate such special deputy superintendents to perform such duties connected with such liquidation as he may deem proper. The superintendent may employ such counsel and expert assistants, without being subject to the requirements of section one hundred twelve of the state finance law or to the prior approval of any other state agency, under such titles as he shall assign to them and may retain such of the officers or employees of such banking organization as he may deem necessary in the liquidation and distribution of its assets. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section.

CREDIT(S)

(L.1914, c. 369; formerly § 62. Amended L.1930, c. 678, § 14; L.1932, c. 399, § 2. Renumbered § 611 and amended L.1938, c. 684, § 108; L.1947, c. 118, § 2; L.1951, c. 719, § 1, eff. July 1, 1951. Amended L.1993, c. 496, § 8.)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 611-a. Appointment of single judge**

When the superintendent has taken possession of and is liquidating the business and property in this state of any banking organization under the provisions of this article, the superintendent shall be entitled to the appointment of a single judge to supervise the liquidation upon request to the administrative judge of the supreme court in the judicial district in which the principal office of such banking organization is located. Such judge shall have the power to order expedited or simplified procedures or order a reference wherever necessary to resolve a matter in such liquidation.

CREDIT(S)

(Added L.1993, c. 496, § 9.)

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→ § 612. Certificates to be recorded and received in evidence

The superintendent, deputy superintendents, and the special deputy superintendents designated under the provisions of section six hundred eleven of this chapter, are hereby authorized to subscribe and acknowledge written statements reciting determinations made or acts performed pursuant to the powers vested in and duties imposed upon the superintendent pursuant to the terms and provisions of this chapter. Every paper so executed and acknowledged by the superintendent or a deputy superintendent or a special deputy superintendent may be recorded in any proper recording office in the same manner and with the same effect as a deed regularly acknowledged and, whether or not so recorded, shall be received in evidence in any action or proceeding now pending or hereafter commenced, and shall be presumptive evidence of the facts therein stated.

Any statement, similarly executed and acknowledged, setting forth an extract from a book, record or document of any banking organization in the possession of the superintendent or any other book, record or document relating to the liquidation thereof, shall be received in evidence in any action or proceeding now pending or hereafter commenced with the same effect as the original book, record or document.

CREDIT(S)

(Added L.1938, c. 684, § 109. Amended L.1944, c. 40, § 4, eff. Feb. 21, 1944.)

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Banking Law (Refs & Annos)**Chapter 2. Of the Consolidated Laws****Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)****→ § 612-a. Payment of wages**

All wages actually owing to the employees of a banking organization in the possession of the superintendent for services rendered within three months prior to the date when possession was taken, not exceeding two thousand dollars to each employee, shall be paid prior to the payment of every other debt or claim, and in the discretion of the superintendent may be paid as soon as practicable after taking possession, except that at all times the superintendent shall reserve such funds as will in his opinion be sufficient for the expenses of administration.

CREDIT(S)

(Added L.1944, c. 40, § 5, eff. Feb. 21, 1944. Amended L.1993, c. 496, § 10.)

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Banking Law (Refs & Annos)

☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 613. Payment by superintendent of expenses of liquidation**

The superintendent shall pay out of the funds in his hands of any banking organization of which he is in possession, all expenses of liquidation, subject to the approval of the supreme court in the judicial district in which the principal office of such banking organization was located. The application for an order of the supreme court pursuant to this section shall be made upon an order to show cause which shall provide that notice thereof to the depositors and creditors, and to the stockholders or shareholders, if any, of such banking organization be published once in each week for two consecutive weeks in a newspaper of general circulation in the county in which the principal office of such banking organization was located. Such order to show cause shall also be served upon such banking organization in such manner as the court, in such order to show cause, may direct. The hearing upon such application shall be held not less than ten days after the first publication of such notice. An order approving the final expenses of liquidation of a corporate banking organization may, in a proper case, and if the petition complies with the requirements of subdivision three of section six hundred twenty-seven of this article, include a provision declaring the banking organization dissolved and its corporate existence terminated. The supreme court shall not upon any application under this section increase the compensation of special deputy superintendents, assistants, counsel or other employees over the amount fixed by the superintendent, or direct the superintendent to make any expenditure not approved by him.

CREDIT(S)

(L.1914, c. 369; formerly § 63. Amended L.1930, c. 678, § 14; L.1932, c. 399, § 2. Renumbered § 613 and amended L.1938, c. 684, § 110; L.1940, c. 481, § 7; L.1949, c. 43, § 2, eff. July 1, 1949.)

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☞ Chapter 2. Of the Consolidated Laws

☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 614. Obtaining possession of pleadings, et cetera, in actions against which attorneys' liens are asserted**

When the superintendent is in possession of any banking organization, and attorneys' liens are asserted by attorneys of such banking organization against any causes of action to which such banking organization is a party, or against pleadings or other papers in the possession of such attorneys relating to such causes of action, or if such liens are asserted against any evidences of title to any assets or against any of the assets of such banking organization then in the possession of such attorneys, the superintendent may institute special proceedings and petition the court to fix and determine the amount of such liens. Such proceedings shall be instituted in the county in which the principal office of such banking organization is located. Upon application of the superintendent and upon notice to such attorneys to be prescribed by the court, the court may by order prior to final order in such proceeding direct such attorneys to deliver to the superintendent all property of such banking organization, against which such liens are asserted, together with such consents to substitution of attorneys as the court may direct, upon the superintendent furnishing security to such attorneys in the manner and to an amount that may be fixed by the court.

CREDIT(S)

(L.1914, c. 369; formerly § 64. Amended L.1930, c. 678, § 14; L.1932, c. 399, § 2. Renumbered § 614 and amended L.1938, c. 684, § 111, eff. June 30, 1938.)

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Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 615. On taking possession, superintendent shall notify those holding assets; effect of notification; turnover of assets and payment of debts owed to the banking organization

When the superintendent shall take possession of the property and business of any banking organization:

1. The superintendent shall forthwith give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities and other entities and individuals known to him to hold any assets of such banking organization. No corporation, unincorporated association, partnership, governmental entity or other entity or individual having notice or knowledge that the superintendent has taken possession of such banking organization, shall have a lien or charge for any payment, advance or clearance thereafter made against any of the assets of such banking organization for liability thereafter incurred.

2. Upon the written demand of the superintendent, any corporation, unincorporated association, partnership, governmental entity or other entity or individual holding assets of such banking organization shall deliver such assets to the superintendent and shall thereupon be discharged from liability with respect to any claim upon such assets; provided, however that such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article to retain collateral and apply such collateral in accordance with paragraph (d) of subdivision two of section six hundred eighteen-a of this article. Nothing in this section shall affect any right of setoff permitted under applicable law; provided, however, that in connection with the liquidation of a branch or agency of a foreign banking corporation pursuant to this article, no entity or individual may set off the business and property in this state of such foreign banking corporation described in subparagraph one of paragraph (c) of subdivision four of section six hundred six of this article against liabilities of such foreign banking corporation other than those that arise out of transactions had by such entity or individual with such branch or agency (which liabilities shall be deemed to include in the case of qualified financial contracts the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to paragraph (c) of subdivision two of section six hundred eighteen-a of this article) and provided that such setoff is otherwise permissible under applicable law.

CREDIT(S)

(Formerly § 65; L.1914, c. 369. Amended L.1923, c. 286; L.1930, c. 678, § 15; L.1932, c. 399, § 2. Renumbered § 615 and amended L.1938, c. 684, § 112, eff. June 30, 1938. Amended L.1993, c. 496, § 11.)

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Banking Law (Refs & Annos)**Chapter 2. Of the Consolidated Laws****Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)****→ § 616. Inventory of assets; where filed**

After the superintendent shall have taken possession of and shall have determined to liquidate the property and business of any banking organization, he shall make in duplicate an inventory of the assets of such banking organization. He shall file one copy of such inventory in his office and shall cause one copy to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located.

CREDIT(S)

(Formerly § 66; L.1914, c. 369. Amended L.1930, c. 678, § 16; L.1932, c. 399, § 2. Renumbered § 616 and amended L.1938, c. 684, § 113, eff. June 30, 1938. Amended L.1993, c. 496, § 11.)

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Banking Law (Refs & Annos)

☰ Chapter 2. Of the Consolidated Laws

☰ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **§ 617. Disposition of property held as bailee, or depositary; opening of safe deposit boxes; disposal of contents**

1. The superintendent may, after he has taken possession of any banking organization, cause to be mailed to each person claiming to be, or appearing upon the books of such banking organization to be

(1) the owner of any personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise, including the contents of any safe, vault or box theretofore opened for non-payment of rental in accordance with the provisions of this chapter, or

(2) the lessee of any safe, vault or box, a notice in writing directed by registered mail to such person at his last address as the same appears on the books of such banking organization or at his last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault or box, within a period stated in said notice, which period shall be not less than sixty days from the date of such notice, and further notifying such person of the terms and provisions of this section. The contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person to whom such notice is mailed and such banking organization shall cease and determine upon the date for removal fixed in such notice. Such person shall have a claim against such banking organization for the amount of the unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

As used herein the phrase "personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise" shall include, without limitation, securities, whether held in custody directly or in book-entry form by such banking organization, its nominee, subcustodian, clearing corporation or similar entity.

2. If such property or contents shall not be removed, and all rent or storage and other charges theretofore accrued, if any, shall not be paid, within the time fixed by such notice, the superintendent may cause such property to be inventoried, or such safe, vault or box, or any package, parcel or receptacle in the custody or possession of such banking organization as bailee or depositary for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried, in his presence or in the presence of a deputy superintendent, a special deputy superintendent, or an examiner and of a notary public, not an officer or employee of such banking organization or of the banking department. Such property or contents shall thereupon be sealed up by such notary public in a package distinctly marked by him with the name of the person in whose name such property or such safe, vault, box, package, parcel or receptacle stands upon the books of such banking organization, and a copy of the inventory of the property therein shall be certified and attached thereto by such notary public. Such package may be kept by the superintendent in such place as he may determine at the expense and risk of the person in whose name it stands until delivered to such person or until sold,

destroyed or otherwise disposed of as hereinafter provided. Such package may, pending final disposition of its contents, be opened by the superintendent, a deputy superintendent, special deputy superintendent or examiner, from time to time for inspection or appraisal, or to enable the superintendent to exercise any of the powers conferred or duties imposed upon him by this article. Whenever such package is opened, the superintendent, deputy superintendent, special deputy superintendent or examiner, shall endorse on the outside of said package the date of opening and re-sealing, and shall prepare an affidavit which shall be attached thereto, showing the reason for opening and the articles, if any, removed therefrom, or placed or replaced therein.

3. At any time prior to the sale, destruction or other disposition of the contents thereof, the person in whose name such package stands may require the delivery thereof upon payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or the contents thereof, including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any. In case the superintendent is in doubt concerning the person entitled to receive such package, or there are conflicting claims thereto, he may require of the claimant an order of the supreme court authorizing and directing the delivery thereof, but for any delivery or transfer made by him in good faith to the claimant appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant. If the principal of, or interest, income, or dividends on any bonds, stock certificates, promissory notes, choses in action or other securities contained in such package, is or becomes due and payable while it is in the possession of the superintendent, he may at his election collect such principal, interest, income or dividends, and from the proceeds thereof may deduct all such sums due for rental and other charges, until the time of such collection. The balance, if any, of the amount or amounts so collected shall be disposed of by the superintendent as hereafter in subdivision five provided.

4. After the expiration of one year from the time of mailing the notice in subdivision one hereof described, the superintendent may apply to the supreme court for an order authorizing him to sell, destroy or otherwise dispose of the contents of such package. In a proper case, the court shall make such order upon such terms and conditions as justice may require. The application for an order of the supreme court pursuant to this subdivision shall be made upon an order to show cause, which shall provide that notice thereof to the person in whose name such package stands and to any other person claiming or appearing to have an interest therein, shall be published, mailed or given in such other manner as the court may prescribe. Whenever, pursuant to the provisions of this subdivision, the superintendent is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for non-payment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents thereof, including the charges and expenses described in subdivision three hereof. Such power to sell, or the power to destroy or otherwise dispose of, when authorized pursuant to the provisions of this subdivision, shall be deemed to include the power to sell, destroy or otherwise dispose of, as the case may be, any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property contained in any package, regardless of whether or not it shall appear from such securities or properties that the person in whose name the package stands, possesses title to or interest in such securities or other properties, or power to transfer such title or interest, and any sale of such securities or properties, pursuant to this subdivision, shall vest good title thereto in the purchaser thereof.

5. From the proceeds of any sale, the superintendent shall deduct all rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale, including the charges and expenses described in subdivision three hereof, and the expenses of sale. The balance of such proceeds, if any, shall be credited to the person in whose name such package stood and shall be paid over to such person, his assignee or legal representative on satisfactory evidence of identity. At the expiration of six months after the completion of the liquidation of such banking organization, the superintendent shall deposit any unclaimed amounts derived from such sale, as provided in article two of this chapter. [FN1]

6. The provisions of this section do not affect or preclude any other remedy by action or otherwise for the enforcement of the claims or rights of the superintendent, or of a banking organization of which he is in possession, against the

person in whose name any property, or any safe, vault, box, package, parcel or receptacle stands, nor affect, nor bar the right of the superintendent or the banking organization to recover, before sale, any debt or claim due him or it, or, after sale, so much of the debt or claim as shall not be paid by the proceeds of the sale.

CREDIT(S)

(Formerly § 67; L.1914, c. 369. Amended L.1930, c. 678, § 16; L.1932, c. 399, § 2. Renumbered § 617 and amended L.1938, c. 684, § 114. Amended L.1940, c. 481, § 8; L.1941, c. 174, § 3; L.1944, c. 40, § 6; L.1951, c. 719, § 2, eff. July 1, 1951; L.1986, c. 259, § 1.)

[FN1] Banking Law § 10 et seq.

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Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 618. Liquidation and conservation of assets; compromising debts and claims; deposit of moneys collected; preference; superintendent, as liquidator, authorized to borrow on and pledge assets of banks

1. (a) The superintendent is authorized, upon taking possession of any banking organization, to liquidate the affairs thereof and to do all acts and to make such expenditures as in his or her judgment are necessary to conserve its assets and business. The superintendent shall proceed to collect the debts due. The superintendent may, upon an order of the supreme court (unless such order is not required pursuant to the provisions of paragraph (b), (c) or (d) of this subdivision), (i) sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by such banking organization, (ii) compromise claims against such banking organization, other than deposit claims, and (iii) sell or otherwise dispose of all or any of the real and personal property of such banking organization wherever situated. In case any of the real property so sold is located in a county in this state other than a county in which the application to the court for leave to sell is made, the superintendent shall cause a certified copy of such order to be filed in the office of the clerk of the county in which such real property is located.

(b) The superintendent may sell, assign, compromise or otherwise dispose of any bad or doubtful debt held by such banking organization the value of which does not exceed fifty thousand dollars upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court. For purposes of this paragraph, the value of any such bad or doubtful debt shall be the current value thereof as determined by the superintendent in good faith.

(c) The superintendent may, when the amount proposed to be paid by the superintendent in compromise does not exceed fifty thousand dollars, compromise any claim against such banking organization, other than any deposit claim, upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court.

(d) The superintendent may sell or otherwise dispose of any personal property of such banking organization (other than bad or doubtful debts subject to the provisions of paragraph (b) of this subdivision) the value of which does not exceed fifty thousand dollars upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court. For purposes of this paragraph, the value of any such personal property of such banking organization shall be (i) in the case of any single class of a security, or any commodity, or other property or claim that has a readily ascertainable market value, such market value, and (ii) in any other case, the current value thereof as determined by the superintendent in good faith.

2. The moneys collected by the superintendent shall be: (a) Deposited on demand, time or otherwise in one or more banks, savings banks or trust companies and, in case of the insolvency or voluntary or involuntary liquidation of the

depository, such deposits shall be entitled to priority of payment on an equality with any other priority given by this chapter;

(b) Deposited on demand, time or otherwise in one or more national banks with its principal office located in this state and with total assets exceeding five billion dollars; or

(c) Invested in obligations of the United States, or those for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

3. Upon an order of the supreme court in and for the county in which the principal office of such banking organization is located, the superintendent is authorized to borrow money and to execute, acknowledge and deliver notes or other evidences of indebtedness therefor and to secure the repayment thereof by the mortgage, pledge, assignment in trust or hypothecation of any or all of the property whether real, personal or mixed of such banking organization. Money may be so borrowed for any one or more of the following purposes:

(a) Facilitating liquidation;

(b) Protecting or preserving the assets in his possession;

(c) Declaring and paying dividends to depositors and other creditors;

(d) Providing for the expenses of administration and liquidation;

(e) Aiding in the reopening or reorganization of such banking organization;

(f) Aiding in the merger or consolidation of any one or more of such banking organizations which are corporations;

(g) Aiding in the sale of all of the assets of any such banking organization.

The superintendent with the aforesaid order of the supreme court shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof.

The superintendent shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this subdivision. The obligation for the repayment of any such loan shall be solely the obligation of the banking organization receiving the benefit of such loan.

CREDIT(S)

(Formerly § 69; L.1914, c. 369. Amended L.1930, c. 678, § 16; L.1932, c. 399, § 1. Renumbered § 618 and amended L.1938, c. 684, § 115. Amended L.1940, c. 481, § 9, eff. April 13, 1940; L.1993, c. 496, § 12; L.2000, c. 567, § 7, eff. Dec. 8, 2000.)

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Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 618-a. Repudiation of contracts

1. Except as otherwise provided in this section, when the superintendent has taken possession of the business and property in this state of a banking organization, unless the federal regulator or insurer is appointed as receiver or liquidator, the superintendent may assume or repudiate any contract, including an unexpired lease, of the banking organization: (a) to which such banking organization is a party, (b) the performance of which the superintendent, in the superintendent's discretion, determines to be burdensome, and (c) the repudiation of which the superintendent determines, in the superintendent's discretion, will promote the orderly administration of the banking organization's affairs. After the expiration of ninety days from the date that the superintendent takes possession of the banking organization, any party to a contract with the banking organization being liquidated may demand in writing that the superintendent assume or repudiate such contract. If the superintendent has not assumed or repudiated the contract within fifteen calendar days from the date of receipt of the demand by the superintendent, the affected party may bring an action in the supreme court in the judicial district in which the principal office of the banking organization is located to obtain an order requiring the superintendent to decide whether to assume or repudiate that contract. If the superintendent has not assumed or repudiated a contract by one month before the last date for filing claims against the banking organization being liquidated pursuant to section six hundred twenty of this article, such contract shall be deemed repudiated. Notwithstanding the foregoing, with respect to an unexpired lease of the banking organization for the rental of real property under which the banking organization was a lessee, if the superintendent remains in possession of the leasehold, the superintendent shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, however, that should the superintendent later repudiate the lease before the end of the lease term, any amounts that may be due the lessor due to such repudiation shall be calculated according to the provisions of paragraph (a) of subdivision three of this section. Notwithstanding any other provision contained in this subdivision, in liquidating a branch or agency of a foreign banking corporation, the superintendent shall not assume or repudiate any qualified financial contract that the branch or agency entered into which is subject to a multi-branch netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements (including termination or close-out values relating to the obligations or entitlements) among the parties to the contract and agreement or arrangement and the superintendent shall not be required to assume or repudiate any other qualified financial contract that the branch or agency entered into; provided, however, that upon any repudiation of any qualified financial contract or the termination or liquidation of any qualified financial contract in accordance with its terms, the liability of the superintendent under such qualified financial contract shall be determined in accordance with subdivision two of this section.

2. (a) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to subdivision one of this section, the liability of the superintendent shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the superintendent took possession of the banking organization. The superintendent shall not be liable for any future wages other than severance payments (to the extent

such payments are reasonable), or for payments for future services, costs of cover, or any consequential, punitive or exemplary damages, damages for lost profits or lost opportunity or damages for pain and suffering.

(b) Except as otherwise provided in this section, the liability of the superintendent upon the repudiation of any qualified financial contract, or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms thereof, shall be limited as provided in paragraph (a) of this subdivision, except that compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized among participants in the market for qualified financial contract claims, calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with its terms. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms thereof, if the superintendent shall be entitled to damages, such damages shall be paid over by the party to the superintendent upon written demand pursuant to subdivision two of section six hundred fifteen of this article, notwithstanding any provision in any such contract that purports to effect a forfeiture of such damages.

(c) In the case of the liquidation of a branch or agency of a foreign banking corporation by the superintendent, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements (including termination or close-out values relating to the obligations or entitlements) among the parties to the contracts and agreements or arrangements, the liability of the superintendent to any party to any such qualified financial contract upon repudiation or in connection with the termination or liquidation of such qualified financial contract in accordance with the terms thereof, shall be calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with its terms and shall be limited to the lesser of (i) the global net payment obligation and (ii) the branch/agency net payment obligation. The liability of the superintendent under this paragraph shall be reduced by any amount otherwise paid to or received by the party in respect of the global net payment obligation pursuant to such qualified financial contract which if added to the liability of the superintendent under this paragraph would exceed the global net payment obligation. The liability of the superintendent under this paragraph to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the foreign banking corporation pursuant to such qualified financial contract to the party. In the event that netting under the applicable netting agreement or arrangement results in a branch/agency net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the superintendent may make written demand upon the party to such contract under subdivision two of section six hundred fifteen of this article for an amount not to exceed the lesser of (x) the global net payment entitlement and (y) the branch/agency net payment entitlement. The liability of the party under this paragraph shall be reduced by any amount otherwise paid to or received by the superintendent or any other liquidator or receiver of the foreign banking corporation in respect of the global net payment entitlement pursuant to such qualified financial contract which if added to the liability of the party under this paragraph would exceed the global net payment entitlement. The liability of the party under this paragraph to the superintendent pursuant to such qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the party pursuant to such qualified financial contract to the foreign banking corporation.

(d) A party to a qualified financial contract with a foreign banking corporation, the branch or agency of which the superintendent is liquidating, which party has a perfected security interest in collateral, or other valid lien or security interest in collateral enforceable against third parties pursuant to a security arrangement related to such qualified financial contract, may retain all such collateral and upon repudiation of that qualified financial contract, or in connection with the termination or liquidation of that qualified financial contract in accordance with its terms thereof, apply such collateral in satisfaction of any claims secured by the collateral, provided that the total amount so applied to such claims shall in no event exceed the global net payment obligation, if any.

(e) The following terms shall have the following meanings: (i) "qualified financial contract" means any securities contract, commodity contract, forward contract (including spot and forward foreign exchange), repurchase agreement,

swap agreement, and any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements (such master agreement, together with all supplements thereto, shall be treated as one qualified financial contract), provided that such contract, option or agreement, or combination of contracts, options or agreements is reflected in the books, accounts or records of the banking organization or a party provides documentary evidence of such agreement; the superintendent may define by regulation securities contract, commodity contract, forward contract, repurchase agreement and swap agreement, and may by regulation or order determine any other agreement to be a qualified financial contract for purposes of this paragraph; (ii) "global net payment obligation" means the amount, if any, owed by a foreign banking corporation as a whole to a party after giving effect to the netting provisions of a qualified financial contract with respect to all transactions subject to netting under such qualified financial contract; (iii) "global net payment entitlement" means the amount, if any, owed by a party (or that would be owed if the relevant agreements provided for payments to either party, upon termination thereof under any and all circumstances) to a foreign banking corporation as a whole after giving effect to the netting provisions of a qualified financial contract with respect to all transactions subject to netting under such qualified financial contract; (iv) "branch/agency net payment obligation" means with respect to a qualified financial contract [FN1] the amount, if any, that would have been owed by the foreign banking corporation to a party after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract; and (v) "branch/agency net payment entitlement" means with respect to a qualified financial contract the amount, if any, that would have been owed by a party to the foreign banking corporation after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract. The superintendent shall have authority to prescribe such regulations relating to qualified financial contracts and netting thereof as the superintendent shall deem appropriate.

3. (a) If the superintendent repudiates a lease of the banking organization for the rental of real or personal property under which the banking organization was a lessee, the lessor under such lease shall be entitled to file a claim with the superintendent for whichever is the least amount of: (i) the amount designated as liquidated damages contained in the agreement between the banking organization and the lessor, (ii) an amount equal to one year's rent under the terms of the repudiated lease, or (iii) an amount equal to the rent for the remaining term of the lease.

(b) If the superintendent repudiates a lease of the banking organization for the rental of real property under which the banking organization was a lessor, and the lessee was not in default at the time of repudiation, the lessee under such repudiated lease may either (i) treat the lease as terminated by such repudiation and vacate the premises, or (ii) remain in possession of the leasehold interest for the balance of the term of the lease, and for any renewal or extension of such term that is enforceable by such lessee under applicable non-insolvency law, unless the lessee defaults under the terms of the lease after the date of such repudiation. If the lessee remains in possession of the leasehold interest, the lessee shall continue to pay to the superintendent the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease, and may offset against such rent payment any damages which may accrue due to the non-performance of any obligation of the banking organization under the lease after the date of repudiation. The superintendent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under this subdivision. Nothing stated herein shall prohibit the superintendent from entering into a new contract with the lessee for the rental of the leasehold which was the subject of the repudiated lease.

4. Except as otherwise provided, notwithstanding any provision in an unexpired lease or other contract, or in applicable law, a contract or unexpired lease of the banking organization may not be terminated or modified by any party other than the superintendent without the concurrence of the superintendent, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the superintendent's taking of possession, solely pursuant to a provision in such contract or lease that is conditioned on the superintendent's taking of possession, or the insolvency, financial condition or liquidation of the banking organization.

5. Nothing in this section shall affect the right of a party to a contract of a foreign banking corporation to seek performance of such contract or damages thereon in any other jurisdiction, provided, however, that the superintendent

shall not be liable for the performance of such contract or damages thereon in any other jurisdiction.

6. The rights granted herein are in addition to any other rights available to the superintendent under common law or any other law.

CREDIT(S)

(Added L.1993, c. 496, § 13. Amended L.1999, c. 84, § 1, eff. June 22, 1999; L.2000, c. 567, § 8, eff. Dec. 8, 2000.)

[FN1] So in original. Probably should be "contract".

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Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 619. Prosecution and defense of actions; actions preferred; limitations; power to execute instruments; exemption from filing and other fees

1. (a) For the purpose of executing any of the powers and performing any of the duties hereby conferred upon him, the superintendent may, in the name of any banking organization of which he is in possession, prosecute and defend any and all actions. Any such action, upon application of the superintendent, shall be entitled to the same preference to which an action by or against a receiver appointed by the court is entitled in any court of the state. Except as provided in the civil practice law and rules for venue for real property actions, [FN1] all actions against a banking organization in the possession of the superintendent or against the superintendent arising out of its affairs, shall be instituted and maintained in a court of record in the county in which such banking organization maintained its principal place of business.

(b) If the superintendent takes possession of the business and property of any banking organization entitled to maintain an action, before the expiration of the time limited for the commencement thereof, such action may be commenced by the superintendent in the name of such banking organization before the expiration of that time or within one year after taking such possession, whichever date is later.

(c) Where by any agreement a period of limitation is fixed for instituting an action upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any action or by statute or ordinance, a period of limitation is fixed for serving or filing any claim or pleading, taking any appeal, or doing any other act, and where in any such case such period had not expired at the date of taking possession of the business and property of any such banking organization, the superintendent may for the benefit of such banking organization institute any such action, serve or file any such claim or pleading, take any such appeal, or do any such other act, required or permitted to such banking organization within a period of one year subsequent to the date of taking of such possession, or within such further period as may be permitted by the agreement, or in the action, or by statute or ordinance, as the case may be.

(d)(1) Except as provided in this paragraph, unless the federal regulator or insurer is appointed as receiver or liquidator, the superintendent's taking of possession of any banking organization and the liquidation of same shall operate as a stay of and as an injunction against, as of the date the superintendent takes possession of the banking organization, applicable to all persons or entities, of:

(i) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the banking organization that was or could have been commenced before the taking of possession, or to recover a claim against the banking organization that arose before the taking of possession;

(ii) The enforcement, against the banking organization or the business and property of the banking organization in this state, of a judgment obtained before the taking of possession;

(iii) Any act to obtain possession of property of the banking organization or of property from the banking organization or to exercise control over property of the banking organization;

(iv) Any act to create, perfect, or enforce any lien against property of the banking organization;

(v) Any act to create, perfect or enforce against property of the banking organization any lien to the extent that such lien secures a claim that arose before the taking of possession; and

(vi) Any act to collect, assess, or recover a claim against the banking organization that arose before the taking of possession.

(2) The superintendent's taking of possession of a banking organization and the liquidation of same does not operate as a stay of or as an injunction against:

(i) The filing of a claim pursuant to section six hundred twenty of this article in the liquidation of the banking organization; the making of a demand upon the superintendent pursuant to section six hundred eighteen-a of this article to decide whether to assume or repudiate a contract of the banking organization; the exercise of any setoff otherwise permissible under applicable law except as limited by subdivision two of section six hundred fifteen of this article; the right of any secured creditor with a perfected security interest or other valid lien or security interest enforceable against third parties to retain collateral, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article, to retain collateral and to apply such collateral in accordance with paragraph (d) of subdivision two of section six hundred eighteen-a of this article; any automatic termination in accordance with the terms of any qualified financial contract or any right to cause the termination or liquidation of any qualified financial contract, as defined in section six hundred eighteen-a of this article, in accordance with the terms thereof; any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more such qualified financial contracts; or the commencement of an action under section six hundred seven of this article or any other action relating to the liquidation before the supreme court justice overseeing the liquidation of the banking organization;

(ii) The commencement or continuation of a criminal action or proceeding against the banking organization;

(iii) The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(iv) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(v) The issuance to the banking organization by a governmental unit of a notice of tax deficiency; and

(vi) The commencement or continuation of a judicial action or proceeding by a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article, to enforce such security interest or lien.

(3) Except as otherwise provided in this paragraph:

(i) The stay or enjoining of an act against property of the banking organization under this paragraph shall continue until such property is no longer the property of the superintendent in possession of the banking organization; and

(ii) The stay or enjoining of any other act under this paragraph shall continue until the superintendent has concluded liquidating the banking organization.

(4) For good cause shown, on request of a party in interest and after notice and a hearing, the supreme court justice overseeing the liquidation may grant relief from the stay or injunction provided under this paragraph, such as by terminating, annulling, modifying or conditioning such stay or injunction.

(5) In the case of any willful violation of a stay or injunction provided in this paragraph by any person or entity who has knowledge of the superintendent's taking of possession of the banking organization that is the subject of the stay or injunction, the superintendent shall recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages.

(e) No action against the superintendent, his or her deputies, special deputies, attorneys, agents or employees, or against a banking organization whose business and property have been taken over by him or her, with respect to any matter arising out of the liquidation, administration, distribution or other disposition by or on behalf of the superintendent

(i) of the estate of such banking organization, or

(ii) of money or property in its possession or under its control as executor, administrator, trustee, guardian, committee, conservator, or other fiduciary capacity, or as bailee, pledgee, depository, agent or otherwise, or

(iii) of money or property in or removed from a safe, vault or box of which it is or was the lessor, shall be commenced subsequent to either (a) three years after the accrual of such cause of action, or (b) the expiration of such period of limitation as may be otherwise applicable thereto under the provisions of any other statute, whichever period is shorter. A cause of action shall be deemed to accrue within the meaning of this paragraph, when the facts upon which such cause of action is based come into existence. Nothing in this paragraph shall be deemed to extend or otherwise affect the period of limitation in section six hundred twenty-five of this article provided with respect to claims or causes of action therein referred to.

2. (a) The superintendent may, in the name of any banking organization of which he is in possession, execute, acknowledge and deliver any and all deeds, assignments, bills of sale, releases, extensions, satisfactions and other instruments necessary and proper to effectuate any sale, lease or transfer of real or personal property or to carry into effect any power conferred or duty imposed upon him by this article or by order of the supreme court. Any instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as though executed by the officers of the banking organization.

(b) The superintendent shall not be required to pay any fee to any clerk, sheriff, register or other public officer for entering, filing, docketing, registering, recording, executing, issuing a copy, transcript, extract or certificate of, or authenticating or exemplifying any paper, record or instrument pertaining to the exercise by the superintendent of any of the powers conferred or duties imposed upon him by any of the provisions of this article, whether or not such paper, record or instrument be executed by the superintendent and whether or not it is connected with an action.

3. The word "action" contained in this section and section six hundred twenty-five of this article is to be construed as including a special proceeding or any proceeding therein or in an action. A cause of action upon which an action cannot be maintained, as prescribed in this article, cannot be effectually interposed as a defense, set-off or counterclaim.

CREDIT(S)

(Formerly § 71; L.1914, c. 369. Amended L.1930, c. 678, § 17; L.1932, c. 399, § 2. Renumbered § 619 and amended L.1938, c. 684, § 116. Amended L.1940, c. 481, § 10; L.1946, c. 68, §§ 2, 3; L.1951, c. 719, § 3; L.1962, c. 310, § 55, eff. Sept. 1, 1963; L.1981, c. 115, § 15; L.1993, c. 496, §§ 14, 15; L.2000, c. 567, § 9, eff. Dec. 8, 2000.)

[FN1] See CPLR 507.

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Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 620. Notice to creditors to make proof of claims; form of claims; claims for priority of payment

1. When the superintendent shall have taken possession of any banking organization, and shall have determined to liquidate its affairs, he or she shall notify all persons who may have claims against such banking organization to present such claims to him or her and make proper proof thereof within four months from the date of such notice and at a place specified therein; provided, that (a) if the superintendent finds that a shorter period than four months will afford a reasonable time for presenting claims and making proof thereof, he or she may specify such shorter period which shall in no event be less than thirty days or (b) if the superintendent finds that a longer period than four months is needed to afford a reasonable time for presenting claims and making proof thereof, he or she may specify such longer period which shall in no event be more than six months from the date of such notice. In any event the superintendent shall specify in such notice the last date for presenting claims and for making proof thereof. The superintendent shall cause such notice to be mailed to all persons whose names appear as creditors upon the books of the banking organization. Such notice to persons appearing as depositors shall be mailed to the address appearing upon the deposit records or ledger of such banking organization. The superintendent shall also cause such notice to be inserted bi-weekly in such newspaper or newspapers as he or she may direct for three consecutive months, the first insertion thereof to be published more than ninety days before the last day fixed in such notice for presenting proof of claims; provided, that where the notice requires claims to be presented within less than four months, the superintendent shall cause such notice to be inserted weekly in such newspaper or newspapers as he or she may direct for three consecutive weeks, the first insertion thereof to be published more than twenty-one days before the last day fixed in such notice for presenting claims. Such notice shall specify that all persons having claims for priority of payment shall make demand in writing for priority in the proof of their claims. The superintendent shall have no power to accept any claim presented after the date specified in such notice as the last date for presenting claims.

2. A proof of claim shall consist of a written statement under oath signed by the claimant or his attorney in fact, and shall be in such form as the superintendent shall require.

3. All persons who shall have failed to demand in writing priority of payment as specified in the notice to file claims, shall be deemed to have waived and abandoned any right to such priority of payment. No person who shall have failed to demand in writing priority of payment as herein above provided, shall be entitled to maintain any action or proceeding for any priority of payment. In all actions or proceedings for priority of payment, the claimant shall be required to allege and prove that the claim upon which the action is instituted was duly filed and contained therein demand in writing for priority of payment.

CREDIT(S)

(Formerly § 72; L.1914, c. 369. Amended L.1930, c. 664, § 4; L.1931, c. 310, § 1; L.1932, c. 399, § 2; L.1934, c. 257.

Renumbered § 620 and amended L.1938, c. 684, § 117. Amended L.1944, c. 40, § 7; L.1951, c. 719, § 5, eff. July 1, 1951; L.1993, c. 496, § 16; L.2000, c. 567, § 10, eff. Dec. 8, 2000.)

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▣ Chapter 2. Of the Consolidated Laws

▣ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 620-a. Certain claims shall not be accepted**

The superintendent shall not accept a claim based on an agreement with the banking organization unless the agreement is either reflected on the accounts, books or records of the banking organization or a creditor provides documentary evidence of such agreement. The superintendent may issue any regulations determined to be necessary to implement this section.

CREDIT(S)

(Added L.1993, c. 496, § 17.)

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→ [**§ 621. Repealed by L.2000, c. 567, § 11, eff. Dec. 8, 2000**]

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Banking Law (Refs & Annos)**Chapter 2. Of the Consolidated Laws****Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)****→ § 622. List of claims duly presented; filing**

The superintendent shall cause to be made in duplicate a complete list of all claims duly presented specifying the name of the claimant, the nature of the claim and the amount thereof. Such list shall also contain a statement of accounts payable as shown by the books and records and as to which no claims have been presented, specifying the name of each person to whom such an account appears to be payable, the nature of the debt and amount thereof. Within sixty days after the last date fixed in the notice to creditors to present and make proof of claims, the superintendent shall file one copy of such list in his office, and cause one copy to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located.

CREDIT(S)

(Formerly § 73; L.1914, c. 369. Amended L.1930, c. 678, § 17; L.1931, c. 191, § 1; L.1932, c. 399, § 2. Renumbered § 622 and amended L.1938, c. 684, § 119, eff. June 30, 1938. Amended L.1993, c. 496, § 18.)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **§ 623. Filing objections to claims presented or listed; procedure upon claim under objection**

Within forty days after the superintendent shall have filed in his office a copy of the list of claims required by section six hundred twenty-two, objections to any claim duly presented or to any account appearing on such list may be made by any party interested, by filing with the superintendent such objections in writing, signed by the objector and duly verified. Unless the superintendent rejects any claim or accounts to which objections have been duly filed with him, he shall, within sixty days after the time to file such objections has expired, apply to the supreme court, upon notice to the objector, for an order directing the superintendent as to the disposition of such claim or account. The court may thereupon dispose of such objections or may order a reference for that purpose.

CREDIT(S)

(Formerly § 74; L.1914, c. 369. Amended L.1930, c. 678, § 17; L.1931, c. 191, § 2. Renumbered § 623 and amended L.1938, c. 684, § 120, eff. June 30, 1938. Amended L.1993, c. 496, § 18.)

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→ § 624. Acceptance and rejection of claims and accounts; filing of list thereof; secured claims and accounts; determination of priorities

1. The superintendent shall, not later than sixty days after the time has expired to file objections to claims duly presented, accept or reject, in whole or in part, every duly filed claim except claims as to which objections are still pending undetermined by the court and accept or reject, in whole or in part, every account payable as shown by the books and records and as to which no claim has been presented except accounts as to which objections are still pending undetermined by the court. Whenever the superintendent accepts a portion of a claim or account and rejects the remainder, the portion accepted and the portion rejected shall, for the purposes of this article, each be deemed separate claims or accounts as the case may be.
2. No claim or account of any secured claimant or creditor shall be accepted at a sum greater than the difference between the value of the claim or account without security and the value of the security itself as of the commencement of the liquidation, unless the claimant or creditor shall, prior to the expiration of the time fixed by the superintendent for the presentation of claims, surrender his security to the superintendent, in which event the claim or account may be accepted in the full amount for which it is valued.
3. Every claim or account payable accepted by the superintendent shall be endorsed "accepted" and filed so endorsed in his office. If the superintendent is unable, from the books, accounts or records of the banking organization, to determine the ownership of a claim or account payable or if for any other reason he doubts the justice or validity of any claim or account payable, he shall reject such claim or account payable and shall endorse the same "rejected" and file it as so endorsed in his office. He shall cause notice of such acceptance or rejection to be mailed within fourteen calendar days after the superintendent has accepted or rejected all claims duly filed. Where a proof of claim has been filed, such notice need be mailed only to the address appearing thereon, and where no proof of claim has been filed, only to the address appearing upon the books of the banking organization. Where, however, the superintendent is unable from the proof of claim or the books and records of the banking organization to identify a name or address, such notice of rejection need not be given.
4. Within thirty days after the superintendent has accepted or rejected all claims duly filed, and all accounts payable as shown by the books and records as to which no claims have been presented, he shall make a list of all such claims and accounts accepted or rejected by him and file one copy thereof in his office and one copy with the supreme court in the judicial district in which the principal office of such banking organization is located.
5. The superintendent shall not determine priorities, in accepting or rejecting claims and the acceptance by the superintendent of a claim in which priority of payment is demanded shall not entitle the claimant to priority. Accepted claims in which priority of payment is duly demanded shall be presented to the supreme court on notice to the claimant

for determination as to their priority of payment. All claims entitled to priority of payment shall be paid ratably and proportionately.

CREDIT(S)

(Formerly § 75; L.1914, c. 369. Amended L.1930, c. 678, § 17; L.1932, c. 399, § 2. Renumbered § 624 and amended L.1938, c. 684, § 121. Amended L.1951, c. 719, § 6, eff. July 1, 1951; L.1993, c. 496, § 19.)

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Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 625. Effect of accepting claims and accounts; limitation upon actions to establish claims and accounts; necessary allegations; effect of judgment

1. When the superintendent has accepted a duly filed claim and has filed such claim endorsed "accepted" in his office, the claimant, unless priority of payment has been duly demanded, and such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of such banking organization as such proceeds are distributed pursuant to section six hundred twenty-seven of this article, provided, however, that any accepted claim or claims for taxes owed to any taxing authority shall be paid in full, to the extent that assets of the banking organization are available, prior to the payment of any other accepted claim. Where the claimant has duly demanded priority of payment, and such claim is entitled by law to priority of payment, the receipt and acceptance of ratable dividends shall be without prejudice to the right to such priority of payment.
2. When the superintendent has accepted an account payable as shown by the books and records and as to which no claim has been presented and included the same in the list filed in his office as provided in section six hundred twenty-four of this article, the owner thereof shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of such banking organization as such proceeds are distributed pursuant to section six hundred twenty-seven of this article.
3. Within six months after the date that the superintendent files the list required by subdivision four of section six hundred twenty-four of this article listing the claims and accounts payable accepted or rejected by the superintendent, a claimant whose claim has been duly filed and has not been accepted by the superintendent, or any person whose account payable as shown by the books and records, as to which no claim has been presented, has not been accepted by the superintendent, may institute and maintain an action thereon against such banking organization. Such action may be maintained only in the supreme court in the judicial district in which the principal office of such banking organization was located.
4. No action shall be maintained against such banking organization while the superintendent is in possession of its affairs and business unless brought within the period of limitation specified in this section. In all actions instituted against such banking organization while the superintendent is in possession of its property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was duly filed and that such claim has not been accepted, or in the case of an action upon an account as to which no claim has been presented the plaintiff shall be required to allege and prove that such account appeared upon the books and records and that such account has not been accepted.
5. If, in an action instituted in accordance with this section, the court should determine that a claim or account rejected

by the superintendent should be allowed, the judgment entered therein shall so provide and shall fix and determine the amount thereof as of the date the superintendent took possession. A claim or account whose status and amount have been so fixed shall have the same force and effect as a claim or account which has been accepted by the superintendent in accordance with the provisions of section six hundred twenty-four of this article. Notwithstanding any other provision of law, the court shall not award interest, nor shall interest accrue, in any such action at a rate greater than the amount rate of interest, if any, that the superintendent has determined is payable to other creditors; provided further that the court shall not award interest, nor shall interest accrue, except from the date from which the superintendent has determined to pay interest to creditors whose claims or accounts payable have been accepted or otherwise duly established to the date such claims or accounts are paid; provided, however, that the court may in its discretion award interest at a rate not to exceed the rate permitted by section six hundred twenty-seven of this article on any such judgment for the claimant in any such action for the period from the date such claim would have been paid had it been accepted initially by the superintendent to the date such judgment is paid.

CREDIT(S)

(Formerly § 76; L.1914, c. 369. Amended L.1930, c. 678, § 17; L.1931, c. 310, § 2; L.1932, c. 399, § 2. Renumbered § 625 and amended L.1938, c. 684, § 122. Amended L.1946, c. 68, § 4; L.1947, c. 95, § 3; L.1951, c. 719, § 7, eff. July 1, 1951; L.1993, c. 496, § 20; L.2000, c. 567, § 12, eff. Dec. 8, 2000.)

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→ **§ 626. Judgments recovered shall not be liens**

A lien shall not attach to any of the property or assets of any banking organization by reason of the entry of any judgment recovered against such banking organization after the superintendent has taken possession of its property and business and so long as such possession continues.

CREDIT(S)

(L.1914, c. 369; formerly § 77. Amended L.1930, c. 678, § 17; L.1932, c. 399, § 2. Renumbered § 626 and amended L.1938, c. 684, § 123, eff. June 30, 1938.)

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→ § 627. Dividends to creditors; distributions to stockholders; dissolution; destruction of documents

1. At any time after the date fixed by the superintendent for the presentation of claims, the superintendent may, upon an order of the supreme court, declare and pay out of the funds remaining in his or her hands after the payment of expenses, one or more dividends to creditors whose claims or accounts payable have been accepted or otherwise duly established. If the superintendent intends to declare and pay more than one dividend to creditors, at the time he or she declares and pays out such first dividend to creditors, the superintendent may pay in full those claims and accounts payable that were accepted, or otherwise duly established, in an amount that is less than one hundred dollars; provided, however, that this sentence shall not be construed as a right to priority of payment; and provided further, that if the superintendent will not be able to satisfy in full all other creditors with accepted claims or accounts payable either in the first or succeeding dividends, then such payment may not be made. After a dividend or dividends aggregating one hundred per centum of the principal amount of all such claims and accounts payable shall have been paid or set apart, and if funds are available therefor, a further dividend or dividends on account of interest accruing, on such claims and accounts payable, subsequent to the commencement of the liquidation may, at the sole discretion of the superintendent, be paid to the creditors entitled thereto at a rate not to exceed four per centum per annum, but nothing herein shall be deemed to create any right to interest which would not otherwise accrue or be payable. No creditor shall be entitled to receive nor be paid interest on any dividend or dividends by reason of delay in payment of such dividend or dividends. Dividends remaining unclaimed or unpaid in the hands of the superintendent for six months after payment of a final dividend, shall be deposited as provided in article two of this chapter [FN1] except that if, after payment of such a dividend, the liquidation is continued in accordance with the provisions of subdivision two of this section, then such dividends shall be so deposited simultaneously with the like deposit of unclaimed or unpaid distributive amounts pursuant to the provisions of such subdivision at the expiration of six months after a final distribution.

2. Whenever the superintendent shall have (a) paid to, or set apart for, each creditor of any stock corporation whose claim or account payable has been accepted or otherwise duly established, a dividend or dividends aggregating the full amount of such claim or account payable together with interest thereon, and (b) set aside proper reserves for claims and accounts payable in litigation and not finally determined and for such other purposes as in the discretion of the superintendent shall be necessary or desirable, and (c) paid all the expenses of liquidation, the superintendent shall, if there be assets remaining in his or her hands, continue the liquidation of the affairs of such corporation and after paying the expenses thereof, distribute the proceeds, together with any part of the foregoing reserves not finally necessary to pay creditors and expenses in full, among the persons equitably entitled thereto according to their respective rights and interests and in such manner and upon such notice as may be directed by order of the supreme court. Any such distributive amounts remaining unpaid or unclaimed in the hands of the superintendent for six months after a final distribution shall be deposited by the superintendent as provided in article two of this chapter.

3. Upon the petition by the superintendent showing that the liquidation of a corporate banking organization of which he has taken possession has been completed and upon such notice as the supreme court may prescribe, the court may,

on such terms as justice requires, make an order declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the superintendent, the existence of such corporation shall cease and determine.

4. Any records, documents and correspondence of any banking organization of which the superintendent has taken possession and any records, documents and correspondence in the custody of the superintendent relating to the liquidation of such banking organization may be destroyed or otherwise disposed of at such time or times and in such manner as the supreme court by order may authorize.

CREDIT(S)

(L.1914, c. 369; formerly § 78. Amended L.1930, c. 678, § 17; L.1932, c. 399, § 2. Renumbered § 627 and amended L.1938, c. 684, § 124; L.1939, c. 777, § 3; L.1940, c. 481, § 11; L.1944, c. 40, §§ 8, 9; L.1947, c. 95, § 4; L.1948, c. 31, § 1; L.1949, c. 43, § 3; L.1950, c. 44, § 5; L.1951, c. 719, § 8, eff. July 1, 1951; L.2000, c. 567, § 13, eff. Dec. 8, 2000.)

[FN1] Section 10 et seq.

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→ § 628. Payment of dividends when deposits have been made available by Federal Deposit Insurance Corporation

When the superintendent shall have taken possession of any banking organization for the purpose of liquidation, and Federal Deposit Insurance Corporation shall have made available to the depositors thereof the amounts of their respective deposits insured by such corporation, he shall be authorized, without requiring assignments from depositors, to pay to such corporation such dividends on account of such insured deposits as such depositors would be entitled to receive had their deposits not been made available to them by such corporation.

CREDIT(S)

(Formerly § 78-a, added L.1935, c. 715. Renumbered § 628 and amended L.1938, c. 684, § 125, eff. June 30, 1938.)

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McKinney's Consolidated Laws of New York Annotated Currentness

Banking Law (Refs & Annos)

Chapter 2. Of the Consolidated Laws

Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ § 629. Payment of dividends to minors, trustees or joint depositors; payment of dividends where adverse claim is asserted; interpleader in certain actions

1. Where a claim or an account payable in the name of any minor has been accepted by the superintendent, dividends thereon shall be paid to such minor and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge to the superintendent.

2 to 4. Repealed.

5. Notice to the superintendent of an adverse interest in a claim or account payable accepted by the superintendent to the credit of any person shall not be effectual to cause the superintendent to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said superintendent from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit said claim or account payable was accepted or his executor or administrator is made a party and served with summons, or shall execute to said superintendent, in form and with sureties acceptable to him, a bond, indemnifying the superintendent from any and all liability, loss, damage, costs and expenses, for and on account of the payment of dividends to such adverse claimant.

6. (a) In all actions or proceedings against the superintendent to recover dividends on claims or accounts payable accepted, if there be any person or persons, not parties to the action, who claim the fund, the court in which the action or proceeding is pending, may, on the motion of the superintendent, make an order amending the proceedings making such claimants parties thereto; and the court shall thereafter proceed to determine the rights and interests of the several parties to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The dividends which are the subject of such an action may remain with the superintendent to the credit of the action until final judgment therein and shall not be entitled to interest, and shall be paid by the superintendent in accordance with the final judgment of the court; or the dividends in controversy may be paid into court to await the final determination of the action and when the dividend or dividends are so paid into court the superintendent shall be stricken out as a party to the action and his liability shall cease.

(c) The costs in all actions against the superintendent to recover dividends shall be in the discretion of the court, and may be charged upon the fund affected by the action.

7. In case the superintendent is in doubt concerning the person entitled to receive payment of any dividend, or there are conflicting claims thereto, he may require of the claimant an order of the supreme court authorizing and directing the

payment thereof, but for any payment made by him in good faith, by check or order, payable to the claimant appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant.

CREDIT(S)

(Added L.1938, c. 684, § 126. Amended L.1947, c. 95, § 5; L.1952, c. 824, § 9; L.1962, c. 310, § 56; L.1964, c. 157, § 7, eff. June 1, 1965; L.1975, c. 499, § 2.)

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➔ **[§ 629-a. Renumbered as Banking Law § 630 by L.1947, c. 95, § 7, eff. March 10, 1947]**

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→ § 630. Claims of shareholders and members of credit unions and savings and loan associations

For the purposes of sections six hundred six to six hundred thirty-one, both inclusive, of this chapter, the terms “depositors” and “creditors” shall be deemed to include shareholders or members of a credit union or savings and loan association, and the terms “claims,” “accounts payable,” “deposits” and “deposit accounts” shall be deemed to include the liability of a credit union or savings and loan association to such shareholders or members, provided, however, that nothing contained in this section shall in any way affect any priority over such shareholders or members to which any general creditor of a credit union or savings and loan association would be entitled in the absence of this section, and provided further that the provisions of subdivision two of section six hundred twenty of this chapter shall not apply to the claims of creditors entitled to such priority.

CREDIT(S)

(Formerly § 629-a, added L.1942, c. 415, § 1. Renumbered § 630, L.1947, c. 95, § 7, eff. March 10, 1947.)

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Banking Law (Refs & Annos)

▣ Chapter 2. Of the Consolidated Laws

▣ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

→ **§ 631. Actions against directors, trustees, managers or officers for violation of their official duties**

At any time while the superintendent is in possession of the property and business of any corporation, he may within six years after the cause of action has accrued institute and maintain in his name as superintendent of banks against its directors, trustees, managers or officers, or any of them, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof.

CREDIT(S)

(L.1914, c. 369; formerly § 81. Renumbered § 631 and amended L.1938, c. 684, § 128, eff. June 30, 1938.)

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Banking Law (Refs & Annos)

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☞ Article XIII. Merger; Voluntary Dissolution; Superintendent's Taking Possession; Reorganization; Liquidation (Refs & Annos)

➔ **[§ 632. Repealed by L.2000, c. 567, § 14, eff. Dec. 8, 2000]**

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→ § 633. Service of notice or process during time of war

Whenever, pursuant to the provisions of this article, any communication, notice or other paper or process is required to be given or served by the superintendent upon any person and the giving or service thereof is in any manner prohibited by the provisions of the act of congress, known as the "Trading with the Enemy Act," [FN1] or any amendment thereof, or the rules, regulations or licenses issued pursuant thereto, or any other law, rule, regulation or license pursuant to law prohibiting or regulating the same, such communication, notice or other paper or process shall be deemed to have been duly given or served on such person if given or served on his behalf, in the manner provided in the pertinent provisions of this article, on the alien property custodian or on such other officer as may have been appointed or designated by the president of the United States of America to take possession of the property of alien enemies. This section shall apply whether or not (1) such alien property custodian or other officer shall actually have taken possession of any property of such person, or (2) the president, or an officer duly designated by him for the purpose, has the power to authorize or license the giving or service of any such communication, notice or other paper or process, and nothing herein shall require the superintendent to apply to the president or such officer for such authority or license, provided, however, that in any case where it appears that at the time such communication, notice or other paper or process is required to be given or served, the president or such officer has actually authorized or licensed the giving or service of same in the manner provided in the pertinent provisions of this article, then this section shall not apply and the superintendent shall be required to give or serve such communication, notice or other paper or process on such person in accordance with such authorization or license.

CREDIT(S)

(Added L.1942, c. 373, eff. April 8, 1942.)

[FN1] 50 USCA App. § 1 et seq.

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→ § 634. Power to appoint regulator or insurer as receiver; additional powers

Notwithstanding anything to the contrary in this chapter, the superintendent may, in his or her sole discretion, and upon such terms and conditions as the superintendent may approve, appoint as receiver or liquidator of any banking organization or branch or agency of a foreign banking corporation, the business and property of which the superintendent has taken or is entitled to take possession, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the successor or assignee of any of the foregoing, or such other regulator, or insurer of deposits or shares as may be empowered by federal law to receive such appointment. Any regulator or insurer which accepts such appointment may act without bond or other security as to such appointment and shall have and possess, and may exercise, all the rights, powers and privileges provided by the laws of this state to the superintendent in his or her capacity as, or to any other, receiver or liquidator of a banking organization or branch or agency of a foreign banking corporation. Upon the payment to any depositor or shareholder of a banking organization or branch or agency of a foreign banking corporation, the regulator or insurer shall be subrogated to all the rights of such depositor or shareholder to the extent of such payment.

In addition to such other powers as he or she may possess under law, the superintendent, or any regulator or insurer which accepts appointment in accordance with the provisions of this section, may, without obtaining the approval of stockholders, shareholders or any court, sell, transfer, assign, consolidate or otherwise dispose of all or any part of the assets, real and personal, including fiduciary relationships, of the banking organization, or branch or agency of the foreign banking corporation, to another banking organization, national bank, branch or agency of a foreign banking corporation, federal savings bank, federal savings and loan association or federal credit union or to such regulator or insurer, its successor or assignee, on such terms as may be determined to be in the best interests of depositors, shareholders and other creditors. In connection therewith the superintendent may, in addition, and without obtaining court approval, borrow from such regulator or insurer any amount necessary to facilitate the assumption of deposit liabilities by any other banking institution and assign any part or all of the assets of a banking organization or branch or agency of a foreign banking corporation as security for such loan.

CREDIT(S)

(Added L.1976, c. 386, § 1. Amended L.1979, c. 328, § 1; L.1994, c. 300, § 5; L.2000, c. 567, § 15, eff. Dec. 8, 2000.)

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