§ 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 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.

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 superintendent 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 the superintendent's 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 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 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.