§ 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 possession 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.