§ 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, 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.