CODE OF VIRGINIA

Title 13.1

Corporations

Title 13.1 - CORPORATIONS

Chapter 1 - STOCK CORPORATIONS [Repealed]

§§ 13.1-1 through 13.1-200. Repealed

Repealed by Acts 1985, c. 522, effective January 1, 1986.

Chapter 2 - NONSTOCK CORPORATIONS [Repealed]

§§ 13.1-201 through 13.1-300. Repealed

Repealed by Acts 1985, c. 522, effective January 1, 1986.

Chapter 3 - COOPERATIVE ASSOCIATIONS

Article 1 - COOPERATIVE ASSOCIATIONS GENERALLY

§ 13.1-301. Organization of cooperative associations; purposes; name; par value stock required

Any number of persons, not less than five, may, under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 of this title or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of this title, associate themselves together as a cooperative association, society, company or exchange, for the purpose of (i) conducting any housing, agricultural, fishing, dairy, mercantile, merchandise, brokerage, water, sewer, manufacturing, service or mechanical business on the cooperative plan or (ii) representing or providing financing for cooperative associations, societies, companies, or exchanges organized pursuant to the laws of this Commonwealth or any other state, provided that the word "cooperative" shall be included as a part of the name. Except for a cooperative association organized to conduct business as a water or sewer company, no cooperative association organized under this article shall conduct any business in this Commonwealth as a public service company or exercise any privileges of such company.

The provisions of Chapter 9 (§ 13.1-601 et seq.) and Chapter 10 (§ 13.1-801 et seq.) of this title, as the case may be, shall apply to cooperative associations created under this section or subject to the provisions of this article, except so far as the same are in conflict with the following sections of this article which shall be applicable only to such cooperative associations, and except that no stock cooperative association shall issue stock without nominal or par value.

Code 1950, § 13-238; 1952, c. 668; 1956, c. 428; 1986, c. 363; 1992, cc. 155, 653; 1994, c. 217.

§ 13.1-301.1. Amendments to articles of incorporation

An association may amend its articles of incorporation by the affirmative vote of two-thirds of the members voting thereon at any regular meeting, or at a special meeting called for the purpose. Notice of the proposed amendment and of the time and place of holding such meetings shall be delivered to each member, or mailed to his last known address shown by the books of the

association, at least ten days prior to any such meetings. No amendment affecting the priority or preferential rights of any outstanding nonvoting stock shall be adopted until the written consent of two-thirds of the holders of such outstanding nonvoting stock has been obtained. Triplicate originals of the articles of amendment duly signed and acknowledged together with the filing fee required to be paid shall be delivered to the Commission. If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of amendment, which shall be admitted to record in its office. Upon the issuance of such certificate, it shall become effective in accordance with its terms.

1958, c. 88.

§ 13.1-301.2. Adoption, change or repeal of bylaws; subject matter

The board of directors or members of the association, before commencing business, shall adopt bylaws not inconsistent with law or its articles of incorporation, and they may alter, amend and revise the same from time to time. The bylaws may be adopted, amended or revised by a majority vote of the board of directors, or by the vote of two-thirds of the members voting thereon at any regular or special meeting of the members or by the written assent of two-thirds of the members voting thereon by mail ballot, provided, that written notice of the proposed bylaw or bylaw amendments or revisions shall have been delivered to each member or mailed to his last known address as shown by the books of the association, at least ten days prior to any such meeting or the date on which the mail ballots must be returned to be counted. The bylaws made by the board of directors may be repealed or changed and new bylaws made by the members, and the members may prescribe that any bylaw made by them shall not be altered, amended or repealed by the directors. The bylaws may also provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting meetings of the members, and the number of members (which may be less than a majority) that shall constitute a quorum;

(b) The manner of voting and the conditions upon which members may vote at general and special meetings by proxy and by mail or by delegates elected by district groups or other associations;

(c) Subject to any provision thereon in the articles of incorporation and in this article, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

(d) The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

(e) Rules consistent with law and the articles of incorporation for the management of the association, the establishment of election districts, the making of contracts, the issuance, retirement and transfer of stock, the relative rights, interests and preferences of members and stockholders, and the mode, manner and effect of the expulsion of a member;

(f) Penalties for violations of the bylaws.

1958, c. 88.

§ 13.1-302. Limitation of individual stockholding

No holder of common stock in any stock cooperative association shall own shares of a greater par value than $1,000, except as hereinafter provided, or be entitled to more than one vote.

Code 1950, § 13-239; 1956, c. 428; 1994, c. 217.

§ 13.1-303. Investment in other stock

At any regular meeting or any regularly called special meeting of a stock cooperative association at which at least a majority of all its stockholders shall be present or represented, any such association may by a majority vote of the stockholders present or represented subscribe for shares and invest its capital or reserve fund in the capital stock of any corporation or cooperative association; provided that it shall not so invest a total amount in excess of twenty-five percent of the amount of its capital stock.

Code 1950, § 13-240; 1956, c. 428; 1994, c. 217.

§ 13.1-304. Purchase of business by issue of shares of stock

Whenever any stock cooperative association shall purchase the business of another association, person or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. In case the cash value of such purchased business exceeds $1,000 the directors of the association are authorized to hold the shares in excess of $1,000 in trust for the vendor and dispose of the same to such persons and within such time, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owners of such business.

Code 1950, § 13-241; 1956, c. 428; 1994, c. 217.

§ 13.1-305. Rights of subscribers before full payment

Certificates of stock of a stock cooperative association shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as stockholders provided part of the stock subscribed for has been paid in cash.

Code 1950, § 13-242; 1956, c. 428; 1994, c. 217.

§ 13.1-306. Distribution of earnings

The net earnings and profits of an association organized pursuant to § 13.1-301 shall be apportioned, distributed and applied as the association may at any general or special meeting direct. The association may in its bylaws prescribe the terms and conditions, rules and regulations under and by which the stockholders or employees, or cooperating nonstockholders may participate in the earnings of the association.

Unless and until otherwise ordered by the association at any general or special meeting the board of directors shall annually apportion the net earnings by first paying dividends on the paid-up

capital stock not exceeding eight per centum per annum, and by then setting aside not less than ten per centum of the remaining net earnings for a reserve fund until an amount has accumulated in the reserve fund equal to thirty per centum of the paid-up capital stock, and five per centum of the then remaining net earnings for an educational fund to be used in teaching cooperation; and shall apportion the remainder of such net profits by uniform dividends to its stockholders upon the amount of purchases of such association from its stockholders, and sales by the association to its stockholders or for their account, and upon the wages and salaries of employees, and one-half of such uniform dividend to cooperating nonstockholders unless otherwise provided by the bylaws of such association as follows: If the association be engaged in the mercantile business, then to the extent the business is so conducted, dividends, except as hereinafter otherwise provided, shall be paid as above provided to cooperating nonstockholders only upon the amount of their purchases and not upon the purchases made by the association. If the association be engaged to any extent in the purchase and sale of products of farm or orchard or as selling agent of such products, or if the association be a productive association, such as a creamery, cannery or factory, and the like, dividends to such extent shall be paid as above provided to cooperating nonstockholders who furnish such products upon the amounts of such products so furnished and not upon sales by the association.

Code 1950, § 13-243; 1956, c. 428.

§ 13.1-307. Permissible limitation of stock ownership or voting rights

Any cooperative association may, either in its charter or by bylaws, provide and require that no membership or share of its stock shall be issued to or owned by any person not a member of a nonstock corporation or nonstock corporations named or designated in such charter or bylaws, or may in like manner provide that memberships or shares of its stock may be issued to or owned by persons not members of such designated nonstock corporation or nonstock corporations, but that when so owned such stock shall have no voting power.

Code 1950, § 13-244; 1956, c. 428; 1994, c. 217.

§ 13.1-308. Limitation of use of "cooperative" in corporate name

A. No corporation or association organized or doing business for profit in this Commonwealth shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this article or of Article 2 (§ 13.1-312 et seq.) of this chapter or of Chapter 9.1 (§ 56-231.15 et seq.) or Chapter 16 (§ 56-485 et seq.) of Title 56 or of any other statute providing for cooperative corporations or associations now existing or hereafter enacted; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or member of any corporation or association legally organized under any law giving it the right to use the word cooperative as a part of its corporate or business name.

B. Subsection A shall not apply to a corporation or association, domestic or foreign, whose purpose is to promote housing opportunities or to represent, coordinate and further the purposes of

groups organized to construct, operate, or promote housing, and such corporation or association may use the term "cooperative" as part of its corporate or other business name or title.

Code 1950, § 13-245; 1950, c. 300; 1956, c. 428; 1993, c. 822 .

§ 13.1-309. Other cooperatives may come under article

Any cooperative marketing association or corporation incorporated under Article 2 (§ 13.1-312 et seq.) of this chapter, or under the general corporation laws of this Commonwealth, may be brought under the provisions of this article, and be entitled to all the benefits thereof, and be subject to all provisions, restrictions and limitations thereof by amending its articles of association or incorporation in the same manner as set out in § 13.1-334, in cases of such associations and corporations existing under Article 2 of this chapter, either by original incorporation or by amendment, and in cases of such associations and corporations existing under the general corporation laws by amending such articles of association or incorporation according to the provisions of Article 11 (§ 13.1-705 et seq.) of Chapter 9 of this title or Article 10 (§ 13.1-884 et seq.) of Chapter 10 of this title, as the case may be; but when such amendment is had in the case of a corporation or association existing under the provisions of Article 2 of this chapter, all special privileges under such article shall be thereby surrendered.

Code 1950, § 13-246; 1956, c. 428; 1994, c. 217.

§ 13.1-309.1. Foreign cooperatives

A foreign cooperative whose purpose shall include one or more of the purposes recognized for domestic cooperatives under this title or any other title of the Code of Virginia shall be authorized to do business under the provisions of this chapter by complying with the laws relating to foreign corporations doing business in the Commonwealth. The foreign cooperative shall deliver to the Commission the documents required by § 13.1-759 if a stock cooperative, or by § 13.1-921 if a nonstock cooperative along with a copy of the cooperative's bylaws. Upon such compliance, the foreign cooperative shall have all the rights and privileges of a domestic cooperative. No foreign cooperative association authorized to do business in this Commonwealth under the provisions of this article shall conduct any business in this Commonwealth as a public service company or exercise any privileges of such company.

1992, c. 653; 1994, c. 217.

§ 13.1-310. Cooperative associations may give certain liens on rotating stocks

Any cooperative association or corporation organized under the laws of this Commonwealth, or under the laws of the United States, or qualifying as a cooperative association under the laws of the United States, may give as security for any loan or loans obtained from any bank for cooperatives organized under any act of Congress a chattel mortgage or deed of trust covering stocks of goods or other things in bulk, but changing in specifics, in which case the lien of such mortgage or deed of trust shall be lost as to all articles disposed of by the mortgagor up to the time of foreclosure but shall attach to the articles purchased to supply their places; provided, however, no

stock of goods shall be pledged by a cooperative association unless such stock has been fully paid for and is owned by the association without incumbrance at the time it is so pledged.

Code 1950, § 13-247; 1956, c. 428.

§ 13.1-311. Taxation

Every cooperative association, society, company and exchange created under the provisions of this article and every cooperative marketing association or corporation and every general corporation that may be brought under the provisions of this article, whether such association, society, company, exchange or corporation be organized or brought under this article prior or subsequent to the date of the approval of this section and whether chartered under the laws of this Commonwealth or otherwise chartered and doing business in this Commonwealth, and conducting a mercantile, merchandise or brokerage business on the cooperative plan shall be taxable as a merchant by the Commonwealth, and by the city or town within which such business is done. Nothing in this article shall exempt any such organization from any state or local merchant's license tax.

1950, c. 365; 1956, c. 428.

§ 13.1-311.1. Provisions relating to dissolution of and revocation of certificates of associations

Those provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) relating, respectively, to the involuntary termination of domestic corporations and to the revocation of the certificates of authority to do business in this Commonwealth of foreign corporations shall apply to every association organized or doing business in this Commonwealth pursuant to the provisions of this chapter; but the provisions of this section shall not be construed as a limitation upon the application of the provisions of Chapters 9 (§ 13.1-601 et seq.) and 10 (§ 13.1-801 et seq.) of this title to such associations under § 13.1-343.

1958, c. 506; 1994, c. 217.

Article 2 - AGRICULTURAL COOPERATIVE ASSOCIATIONS

§ 13.1-312. Declaration of policy [Not set out]

Not set out. (1956, c. 428.)

§ 13.1-313. Definitions

As used in this Act, unless the context or subject matter requires otherwise:

(a) "Agricultural products" include livestock and livestock products, dairy products, poultry and poultry products, wine and viticultural products, seeds, nuts, ground stock, horticultural, floricultural, forestry, bee and any and all kinds of farm products.

(b) "Supplies" include any and all types of supplies, machinery and equipment used by farmers as producers or used by farmers as consumers.

(c) "Association" means a corporation organized under or adopting the provisions of this Act, or a foreign association or corporation authorized to do business in this Commonwealth, organized under any general or special act as a cooperative association for the mutual benefit of its members and other patrons as farmers, and which confines its operations to purposes authorized by this Act and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this Act for associations organized hereunder and which qualifies to do business in this Commonwealth under this Act.

Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products and obtain supplies and services on a cooperative nonprofit basis.

(d) "This Act" means this article, which may be cited as the "Agricultural Cooperative Association Act."

(e) "Member" includes the holder of a membership in an association without capital stock and the holder of voting stock in an association organized with capital stock.

(f) "Person" includes an individual, a partnership, a corporation and an association.

(g) "Patron" means a person using the marketing facilities of an association for the marketing of agricultural products, or a person using the purchasing or service facilities of an association for the purchase of supplies or the rendering of services.

(h) "Board" means the board of directors of an association.

(i) "Commission" means the State Corporation Commission of Virginia.

Code 1950, § 13-248; 1956, c. 428; 2010, cc. 317, 561.

§ 13.1-314. Qualification of incorporators

Five or more individuals, engaged in agriculture as bona fide producers of agricultural products, or two or more associations of such producers, may form an association.

1956, c. 428.

§ 13.1-315. Purposes

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

(a) Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing such products, or manufacturing or marketing the by-products thereof.

(b) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and other patrons.

(c) Performing or furnishing business or educational or other services, including the services of buildings, machinery and equipment, on a cooperative basis.

(d) Financing any of the above-enumerated activities for its members.

Code 1950, § 13-255; 1956, c. 428.

§ 13.1-316. Articles of incorporation

Articles of incorporation shall be signed in triplicate by each of the incorporators and acknowledged by them, if natural persons, and, if associations, by the president and secretary of each such association, before an officer authorized to take acknowledgments, and shall state:

(a) The name of the association which shall be distinguishable upon the records of the Commission from the name of any association or corporation, whether issuing shares or not issuing shares, limited liability company, business trust or limited partnership existing under the laws of this Commonwealth, or the name of any foreign corporation, whether issuing shares or not issuing shares, limited liability company, business trust or limited partnership authorized to transact business in this Commonwealth, or any corporate, limited liability company, business trust or limited partnership name reserved or registered as provided by law;

(b) The address of its initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its initial registered agent at such address and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth;

(c) Its purposes;

(d) Whether organized with or without capital stock; and if organized with capital stock, a description thereof in accordance with the requirements of § 13.1-619;

(e) If organized without capital stock, whether the property rights and interests of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined;

(f) The maximum number of directors, not less than five, who are to manage the affairs of the association;

(g) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(h) If the duration of a corporation is not to be perpetual, the period of its duration;

(i) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of election districts, the election

of delegates to represent the members residing therein and the election of directors to represent such election districts, either directly or indirectly by said delegates, for voting by proxy or mail ballot and the issuance, retirement and transfer of membership certificates and stock.

Code 1950, § 13-257; 1956, c. 428; 1958, c. 564; 2001, cc. 517, 541; 2003, c. 592.

§ 13.1-317. Filing and recording articles of incorporation

(a) Triplicate originals of the articles of incorporation, duly signed and acknowledged together with the filing fee required to be paid, shall be delivered to the Commission. If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of incorporation, which shall be admitted to record in its office. Upon the issuance of such certificate, it shall become effective in accordance with its terms. One original counterpart of the articles of incorporation, together with the certificate of incorporation issued by the Commission, shall be certified by the Commission to the Commissioner of Agriculture and Consumer Services for filing and another counterpart shall be certified to the Director of the State Agricultural Extension Division for filing.

(b) For filing and recording the certificate of incorporation, an amendment to the certificate of incorporation, or a certificate of adoption, the association shall pay such fees as conform to the laws governing corporations generally. However, for filing the certificate of incorporation of an association organized without capital stock, the association shall pay ten dollars and for filing an amendment to the certificate of incorporation, two dollars and one-half. For certifying and transmitting copies as required by this section, the association shall pay a fee of one dollar per copy.

1956, c. 428.

§ 13.1-318. Amendments to the articles of incorporation

An association may amend its articles of incorporation by the affirmative vote of two-thirds of the members voting thereon at any regular meeting, or at a special meeting called for the purpose. Notice of the proposed amendment and of the time and place of holding such meetings shall be delivered to each member, or mailed to his last known address shown by the books of the association, at least ten days prior to any such meetings. No amendment affecting the priority or preferential rights of any outstanding nonvoting stock shall be adopted until the written consent of two-thirds of the holders of such outstanding nonvoting stock has been obtained. Triplicate originals of the articles of amendment duly signed and acknowledged together with the filing fee required to be paid shall be delivered to the Commission. If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of amendment, which shall be admitted to record in its office. Upon the issuance of such certificate, it shall become effective in accordance with its terms. One original counterpart of the articles of amendment, together with the certificate of amendment issued by the Commission, shall be certified by the Commission to the Commissioner of Agriculture and Consumer Services for filing and another counterpart shall be certified to the Director of the State Agricultural Extension Division for filing.

Code 1950, § 13-258; 1956, c. 428.

§ 13.1-319. Bylaws

The board of directors or members of the association, before commencing business, shall adopt bylaws not inconsistent with law or its articles of incorporation, and they may alter, amend and revise the same from time to time. The bylaws may be adopted, amended or revised by a majority vote of the board of directors, or by the vote of two-thirds of the members voting thereon at any regular or special meeting of the members or by the written assent of two-thirds of the members voting thereon by mail ballot, provided, that written notice of the proposed bylaw or bylaw amendments or revisions shall have been delivered to each member or mailed to his last known address as shown by the books of the association, at least ten days prior to any such meeting or the date on which the mail ballots must be returned to be counted. The bylaws made by the board of directors may be repealed or changed and new bylaws made by the members, and the members may prescribe that any bylaw made by them shall not be altered, amended or repealed by the directors. The bylaws may also provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting meetings of the members, and the number of members (which may be less than a majority) that shall constitute a quorum;

(b) The manner of voting and the conditions upon which members may vote at general and special meetings by proxy and by mail or by delegates elected by district groups or other associations;

(c) Subject to any provision thereon in the articles of incorporation and in this Act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

(d) The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

(e) Rules consistent with law and the articles of incorporation for the management of the association, the establishment of election districts, the making of contracts, the issuance, retirement and transfer of stock, the relative rights, interests and preferences of members and stockholders, and the mode, manner and effect of the expulsion of a member;

(f) Penalties for violations of the bylaws.

One copy of the bylaws and all amendments thereto, certified by the secretary of the association, shall be transmitted to the Commissioner of Agriculture and Consumer Services and one copy to the Director of the State Agricultural Extension Division within thirty days after their adoption.

Code 1950, § 13-261; 1956, c. 428.

§ 13.1-320. Powers

A. An association shall have the capacity to act possessed by natural persons, but such association shall have authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles of incorporation and which are not repugnant to law.

B. Without limiting or enlarging the grant of authority contained in subsection A of this section, it is hereby specifically provided that every such association shall have authority:

1. To act as agent, broker or attorney-in-fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles of incorporation, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.

2. To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles of incorporation and that may be conducive to or expedient for the interest or benefit of the association.

3. To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount or sell any evidence of debt, obligation or security.

4. To establish and accumulate reserves and surplus to capital, and such other funds as may be authorized by the articles of incorporation or the bylaws.

5. To own and hold membership in, or shares of the capital stock of, other associations and corporations and the bonds or other obligations thereof, engaged in any related activity, in producing, warehousing or marketing any of the products handled by the association or in financing its activities or of its members, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.

6. If such associations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this Commonwealth or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the associations.

7. To acquire, hold, sell, dispose of, pledge or mortgage any property which its purposes may require, subject to any limitation prescribed by law or its articles of incorporation.

8. To borrow money and to give its notes, bonds or other obligations therefor and secure the payment thereof in any manner consistent with law.

9. To purchase or otherwise handle machinery, equipment, supplies and perform services for nonmembers.

10. To market or otherwise deal in products of nonmembers to an amount not greater in annual value than such products as are dealt in for or on behalf of its members.

11. To have a corporate seal and to alter the same at pleasure.

12. To continue as a corporation for the time limited in its articles of incorporation, or if no time limit is specified, then perpetually.

13. To sue and to be sued in its corporate name.

14. To conduct business in this Commonwealth and elsewhere.

15. To dissolve and wind up.

Code 1950, § 13-260; 1956, c. 428; 1964, c. 220; 1989, c. 576 .

§ 13.1-321. Members

(a) An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers.

(b) The articles of incorporation may limit the amount of voting stock which a member may own.

(c) Under the terms and conditions prescribed in the bylaws a member shall lose his membership and his right to vote if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

(d) No member shall be personally liable for any debt or liability of the association.

(e) No member shall have more than one vote.

Code 1950, § 13-263; 1956, c. 428.

§ 13.1-322. Membership or voting stock certificates; transfers; dividends; nonvoting stock

A. No certificate for membership or stock shall be issued until fully paid for, but promissory notes may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote and hold office.

Fractional shares may be issued by capital stock associations. Certificates representing shares and certificates of membership or other evidence of the patron's equity in any fund, capital investment or other assets of the association shall be signed by the president or a vice-president or treasurer or assistant treasurer and the secretary or an assistant secretary of the association, or by facsimiles of their signatures, and may be sealed with the seal of the association, or a facsimile thereof.

B. Certificates of membership of a nonstock association shall not be transferred without the consent of the association's board of directors.

C. Voting stock in capital stock associations shall not be transferable to persons not eligible to membership in the association and such restrictions must be set forth in the bylaws of each capital stock association and printed on every stock certificate subject thereto.

D. The board of directors of an association, from time to time, may declare and the association may pay dividends on the stock or membership capital except when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation.

E. Net savings (which are hereby defined as being the excess of receipts over costs and expenses for each year of operations) in excess of dividends on outstanding stock or membership capital and additions to reserves shall be distributed on the basis of patronage, and the books of the association shall provide the basis for determining the interest of members and other patrons in the reserves. The distribution of patronage refunds may be restricted to members or be made at the same or a different rate for members and nonmembers. The bylaws may provide that any distribution to a nonmember, eligible for membership may be credited to such nonmember, until the amount thereof equals the value of a membership certificate or a share of the association's voting stock.

F. After a member has notified the association of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the board shall appraise the value in money of his membership interest in the association and shall determine and fix the time when the association shall pay him the value of his interest, unless the member, with the consent of the board, transfers his certificate of membership.

G. An association may issue nonvoting stock to members and nonmembers. Nonvoting stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles of incorporation or bylaws and printed on the stock certificates. Payment for nonvoting stock may be made in cash, services or property as determined by the board.

Voting stock may be issued only for money or notes or in payment of patronage refunds at par.

H. Except when its debts exceed fifty per centum of its assets, an association may purchase for cash its voting stock at book value or par value, whichever is less, and may call such stock for redemption on the same basis pursuant to a plan for rotating ownership of such stock set forth in its articles of incorporation or in its bylaws. The determination of book value by the board of directors shall be incontestable except for fraud.

I. The association may from time to time issue to each patron a certificate or other evidence of the patron's equity in any fund, capital investment or other assets of the association. Such certificate or other evidence of such equity may be transferred only to the association, or to such other purchaser as may be approved by the board of directors, upon such terms and conditions as shall be provided in the bylaws and printed thereon.

J. Notwithstanding any other provision of law, when there is held by any association any membership or patronage equity, including but not limited to membership stock, patronage refunds, patronage refund allocations, or any credit or distribution attributable to business done with or for patrons, to the credit of a person who has not had a current address on file with the association for a period of not less than three consecutive years, then the bylaws or member

agreements of the association may provide that such equity shall be deemed to have been transferred by forfeiture to the association and shall thereafter be the property of the association; however, such membership or patronage equity shall be deemed forfeited to the association only if (i) the association publishes conspicuous notice of such pending forfeiture in its regular member publication, if any, and a publication of general circulation and (ii) such equity is not claimed by such person or, if such person is deceased, such person's next of kin within 180 days of such publication or such longer period as set out in the bylaws or member agreements of the association. If there is no such provision in the association's bylaws or member agreements, or if there is no publication, then any unclaimed membership or patronage equity shall be treated in accordance with the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.).

K. Any association organized with capital stock under this article may accept registrations of such stock in the names of two or more persons, payable to any one of them, or to any one of them or the survivor; and any person so named, whether the others be living or not, may accept dividend payments and withdraw from the association and receive the amount payable on withdrawal in the same manner and on the same terms as are allowed by law and the articles of incorporation and bylaws in case of any other member or stockholder and the receipt or acceptance of dividends or amounts payable on withdrawal by the person so paid shall be a valid and sufficient release and discharge of the association for any payment so made.

Code 1950, §§ 13-269, 13-270, 13-273 to 13-277; 1952, c. 166; 1956, c. 428; 1975, c. 403; 1981, c. 51; 2001, cc. 797, 838.

§ 13.1-323. General and special meetings; how called

After the incorporation of an association the members thereof shall hold an organization meeting at a time and place fixed by the board of directors named in the articles of incorporation and shall adopt a set of bylaws. Not less than ten days' written notice thereof shall be given to each member. An association may provide in its bylaws for one or more regular meetings each year. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when ten percent of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Regular or special meetings may be held within or without the Commonwealth. Notice of all meetings, except as otherwise provided by law or the articles of incorporation or bylaws, shall be mailed to each member at least ten days prior to the meeting. In the case of special meetings the notice shall state the purposes for which it is called. The bylaws may provide that all notices shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

Code 1950, § 13-265; 1950, c. 238; 1956, c. 428; 1989, c. 577 .

§ 13.1-324. Directors generally; executive committee

(a) The business of the association shall be managed by a board of not less than five directors. The directors, with the exception of the public directors, shall be elected from the membership of the association or from the officers, directors or membership of a member association. The bylaws shall provide that one or more directors shall be appointed by the Director of the State Agricultural Extension Service. The director or directors so appointed shall be known as public directors. They need not be members of the association, or officers, directors or members of a member association, but shall have the same powers and rights as the directors elected by the members. A director shall hold office for the term for which he was appointed or elected and until his successor is elected, or appointed, and qualified.

(b) The names of the first directors shall be stated in the articles of incorporation. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

(c) The number, qualifications, terms of office, manner of election or appointment, time and place of meeting and the powers and duties of the directors may, subject to the provisions of this Act and the articles of incorporation, be prescribed by the bylaws.

(1) Except as otherwise prescribed in the bylaws, a director shall be elected or appointed for a term of one year.

(2) Except as otherwise prescribed in the bylaws, vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the bylaws provide for the election of directors by districts, in which case the board shall call a special meeting of the members or delegates in the district to elect a person qualified to fill the vacancy. A director elected by the remaining members of the board shall serve until his successor is elected by the members at their next annual meeting or at any special meeting called and held prior thereto. This subsection shall not apply, however, to public directors; any vacancies occurring in the office of a public director shall be filled in the same manner as the original appointment was made.

(d) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

(e) The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

Code 1950, §§ 13-266, 13-267; 1956, c. 428.

§ 13.1-325. Removal of director

Any member may ask for the removal of an elected director by filing charges with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and by two-thirds of the voting power voting thereon the association may remove the director. The director whose removal is requested shall be served with a copy of the charges not less than ten days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal shall have the same opportunity. In case the bylaws provide for election of directors by districts, then the petition for removal of a director must be signed by twenty per centum of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in the district to consider the removal of the director; and by two-thirds of the voting power of the members of that district voting thereon the director in question shall be removed from office.

Code 1950, § 13-268; 1956, c. 428.

§ 13.1-326. Officers generally

The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. The president and at least one of the vice-presidents must be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

Code 1950, § 13-267; 1956, c. 428.

§ 13.1-327. Removal of officer

Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than ten days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

Code 1950, § 13-268; 1956, c. 428.

§ 13.1-328. Referendum

The articles of incorporation or bylaws may provide that upon demand of two-fifths of all the directors, any matter that has been approved or passed by the board must be referred to the members for their approval before it becomes effective. No referendum shall be allowed unless it is demanded by the required number of directors at the meeting at which the matter in question is adopted. The referendum of the members may be conducted by mail ballots or by their vote taken at the next annual meeting or at a special meeting called for such purpose. Immediately upon receipt of a written petition signed by at least twenty per centum of the members, the board of directors shall require the secretary to conduct a referendum on the matter set forth in said petition.

Code 1950, § 13-262; 1956, c. 428.

§ 13.1-329. Marketing contracts; enforcement; inducing breach; spreading false reports

(a) An association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products delivered by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling overhead, and other costs and expenses, including (a) interest or dividends on its preferred stock, not exceeding eight per centum per annum, (b) reserves for retiring the stock, if any, (c) other proper reserves, and (d) interest or dividends not exceeding eight per centum per annum upon common stock.

(b) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premium for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provision shall be valid and enforceable in the courts of this Commonwealth.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(d) Any person who knowingly induces any member or stockholder of an association or corporation organized hereunder to breach his marketing contract with the association or corporation shall be liable to the association or corporation for the full amount of damages sustained by it by reason of such breach; and any person who maliciously and knowingly spreads false reports about the finances or management of any such association or corporation shall be liable to the association or corporation aggrieved in a civil suit for the actual damage which it may sustain by

reason of such false reports, and also in the penal sum of $500 for each such act, which may be recovered in the same action.

(e) Any person, firm or corporation conducting a public tobacco warehouse within this Commonwealth who knowingly solicits or permits any member of any association organized hereunder to breach his marketing contract with the association by selling, offering for sale, or displaying for sale or for auction such member's products contrary to the terms of any marketing agreement of which such person or any member of such firm or any active officer or manager of such corporation has knowledge or notice, shall be liable to the association aggrieved in a civil suit in the penal sum of not less than $100 nor more than $500 for each such offense; and such association shall be entitled to an injunction against such person, firm or corporation, to prevent further breaches and a multiplicity of actions thereon. In addition, such person, firm or corporation shall pay to the association a reasonable attorney's fee and all costs involved in any such litigation or proceedings at law. Provided, however, that no such action or suit by such an association shall lie unless there has been first served upon such person, firm or corporation after such tobacco has been delivered to the warehouse, and prior to the sale thereof, a notice, in writing, stating that the products of a member of such association are about to be sold, offered for sale or displayed for sale. Such notice may be served by any peace officer or any other person, and the affidavit of the person serving the same shall be prima facie evidence of such service. It shall be the duty of any police officer, sheriff, deputy sheriff, constable or deputy constable of this Commonwealth to serve such notice upon request of any authorized representative of the association, and upon the payment of a fee of fifty cents for each such service.

Code 1950, §§ 13-278, 13-279; 1956, c. 428.

§ 13.1-330. Recordation of marketing contracts

(a) Whenever any body of agricultural producers, cooperative corporation composed of agricultural producers or cooperative marketing association incorporated under the laws of this Commonwealth, or under the laws of any other state of the United States and licensed to do business in this Commonwealth, which is engaged in marketing agricultural products, other than leguminous food products, for its members shall prepare and deliver to the clerk of any court in this Commonwealth in the office of whom deeds are admitted to record, a book to be called "the contract book of ....." (namely the body, corporation or association), such book shall thereupon become a public record book of such clerk's office, and it shall be the duty of such clerk to record therein the matters and things authorized by the succeeding section.

(b) At any time after any such book shall have been so delivered to the clerk as provided herein, the body, corporation or association which has delivered the same may request the clerk to whom such book has been delivered to record therein any marketing contracts or agreements which have been entered into by such body, corporation or association and any members thereof; provided, however, that if any such contracts or agreements be in the same words and figures as any other contracts or agreements with any other members of the body, corporation or association, and be

separately signed by such members of the body, corporation or association, such body, corporation or association may have one of such contracts or agreements recorded in extenso in such book, and may furnish the clerk with a list of the names of persons appearing on such contracts as signers thereof, with the dates of the signatures respectively, whereupon the clerk shall record such names as signers of such contracts or agreements, with the dates of their signatures, respectively, so furnished. Such recordation of the list of signers so furnished shall be equivalent to the recordation in extenso of the contract or agreement of each signer thereon. Such copy of such contract or agreement and such list of names of persons appearing on such contracts as signers thereof shall be sworn to by some officer of the body, corporation or association cognizant of the facts before some officer authorized to take acknowledgments to deeds. But in no case shall any such contract or agreement be deemed to be recorded as to any signer thereof until his name shall be indexed in such book by the clerk, which indexing the clerk is hereby required to do.

(c) When the provisions of the two preceding subsections shall have been complied with, and any such recordation as is therein mentioned is made in the county in which is situated the land on which the produce covered by the particular marketing contract or agreement concerned is grown or produced, such recordation shall operate as constructive notice of the existence of such contract or agreement, and of the terms thereof, and all persons contracting or dealing with any such member in relation to any such produce covered by such contract or agreement shall be bound thereby; and all rights or liens acquired by any such person in such produce subsequent to the date of such recordation shall be subject in all respects to the rights of the body, corporation or association under such contract or agreement; provided, however, that nothing herein contained shall affect the statutory lien of a landlord for advances made to a tenant, or for rent; and provided, also, that nothing herein contained shall affect a bona fide purchaser of any agricultural product, upon the floor of any public warehouse, when such purchaser is without actual notice of the rights of the body, corporation or association under such contract or agreement nor a warehouseman selling such products at public auction on his warehouse floor, without actual notice of such contract or agreement.

(d) For making the recordations authorized by this section, the clerk shall be entitled to the following fees, to be paid by the body, corporation or association for which the service is performed: for recording a contract or agreement in extenso, the same fees as for recording a deed; for recording a sworn list of names when furnished as above provided, two cents for each person. No tax shall be charged on the recordations authorized hereby.

Code 1950, §§ 13-280 to 13-283; 1956, c. 428.

§ 13.1-331. Associations are not in restraint of trade

(a) No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreements authorized in this Act, be construed as an

unlawful restraint of trade, or as a part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(b) An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations, and otherwise, past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

Code 1950, § 13-284; 1956, c. 428.

§ 13.1-332. Voluntary dissolution

(a)(1) The members of an association may at any regular meeting or any special meeting called for the purpose, upon thirty days' notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by two-thirds of the voting power voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The meeting shall by like vote designate a committee of three who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate its assets, pay its debts and divide any surplus among the members in accordance with their respective rights and interests under their contracts with the association and the articles of incorporation and bylaws. A report of the proceedings had under this section, together with a list of the names and residences of the directors and officers of the association, and the names and residences of the trustees appointed, certified by the president and the secretary, shall be filed in the office of the clerk of the Commission. The Commission, upon being satisfied that the requirements of law have been complied with, shall issue a certificate of dissolution, and thereupon the association shall stand dissolved and the trustees shall proceed to settle up and adjust its business and affairs.

(2) Whenever all the members shall consent in writing to the dissolution and the appointment of three trustees for winding up the affairs of the association, no meeting or notice thereof shall be necessary, but on filing such consent with the Commission, it shall issue a certificate of dissolution, and the association shall stand dissolved and the said trustees shall proceed to settle up and adjust its business and affairs.

(3) Whenever a certificate of dissolution has been issued by the Commission, it shall certify one copy of the certificate to the Commissioner of Agriculture and Consumer Services and one copy to the Director of the State Agricultural Extension Division.

(4) The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

(5) Any vacancies in the trusteeship may be filled by the remaining trustees.

(b) In the case of an association dissolving pursuant to this section, the circuit court of the county or the circuit, corporation, or other court having equitable jurisdiction in the city where its principal office is located, upon petition of the trustees or a majority of them, or in a proper case upon the petition of a creditor or member, or upon the petition of the Attorney General upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

(1) The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the association to present in writing and in detail at the place specified their respective accounts and demands to the trustees by a day therein specified, which shall not be less than forty days from the service or first publication of such notice;

(2) The payment or satisfaction in whole or in part of claims and demands against the association, or the retention of moneys for such purpose;

(3) The presentation and filing of intermediate and final accounts of the trustees, the hearing thereon, the allowance or disallowance thereof, and the discharge of the trustees, or any of them, from their duties and liabilities;

(4) The administration of any trust or the disposition of any property held in trust by or for the association;

(5) The sale and disposition of any remaining property of the association and the distribution or division of such property or its proceeds among the members or persons entitled thereto;

(6) Such matters as justice may require.

All such orders and judgments shall be binding upon the association, its property and assets, its trustees, members, creditors and all persons having claims against it.

1956, c. 428.

§ 13.1-333. Repealed

Repealed by Acts 1989, c. 465 .

§ 13.1-333.1. Annual reports

Each association subject to this chapter within six months after the close of its fiscal year shall transmit to each of its members an annual report containing the name of the association, its place of business, a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders, if a stock corporation, or the number of members and the amount of the membership fees received, if a nonstock association; an

income and expense statement; and its balance sheet. Any association audited by a certified public accountant may comply with this section by transmitting a copy of such audit to its members.

The term "transmit," as used in this section, may be satisfied by printing the annual report or audit in an official publication of the association.

1989, c. 465 .

§ 13.1-334. Application to existing associations

(a) This Act shall be applicable to any existing association formed under or which has adopted the provisions of the Agricultural Cooperative Association Act, Chapter 15, Title 13, as heretofore amended, and all such associations shall have and may exercise and enjoy all the rights, privileges, authority, powers and capacity granted or afforded under and in pursuance of this Act and shall be subject to all restrictions and requirements of this Act to the same extent and effect as though organized hereunder.

(b) Any agricultural cooperative marketing or purchasing association organized as a corporation under the laws of this Commonwealth may bring itself under and within the terms of this Act as if organized hereunder and may thereafter operate in pursuance of the terms hereof, and may exercise and enjoy all the rights, privileges, authority, powers and capacity granted or afforded under and in pursuance of this Act and shall be subject to all restrictions, limitations and requirements of this Act to the same extent and effect as though organized hereunder, by filing in triplicate with the Commission, articles of adoption signed by its president or one of the vice-presidents, under the seal of the corporation, attested by its secretary and acknowledged by them before an officer authorized by the laws of this Commonwealth to take acknowledgments of deeds, certifying that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself within the terms of this Act. If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of adoption, which shall be admitted to record in its office. Upon the issuance of such certificate, it shall become effective in accordance with its terms. One original counterpart of the articles of adoption, together with the certificate of adoption issued by the Commission, shall be certified by the Commission to the Commissioner of Agriculture and Consumer Services for filing and another counterpart shall be certified to the Director of the State Agricultural Extension Division for filing.

1956, c. 428.

§ 13.1-335. Saving clause

This Act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this Act had not been passed. This Act shall not impair or affect any contract entered into by any association prior to the time this Act takes effect.

1956, c. 428.

§ 13.1-336. Limitations of the use of the word "cooperative."

A. No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this Commonwealth shall use the word "cooperative" or any abbreviation thereof, as a part of its corporate or business name unless it has complied with the provisions of this Act or some other statute of this Commonwealth relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use of term "cooperative" in this Commonwealth if it has obtained the privilege of doing business in this Commonwealth under any cooperative statute of this Commonwealth. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to a fine not exceeding fifty dollars. For the purpose of this section, each day's violation may be considered a separate offense.

B. Subsection A shall not apply to a corporation or association, domestic or foreign, whose purpose is to promote housing opportunities or to represent, coordinate and further the purposes of groups organized to construct, operate, or promote housing, and such corporation or association may use the term "cooperative" as part of its corporate or other business name or title.

Code 1950, § 13-289; 1956, c. 428; 1993, c. 822 .

§ 13.1-337. Foreign associations

A foreign corporation that can qualify as an association, as defined in § 13.1-313, may be authorized to do business in this Commonwealth under the provisions of this Act by complying with the laws relating to foreign corporations doing business in the Commonwealth and filing with the Commissioner of Agriculture and Consumer Services and the Director of the State Agricultural Extension Division, a copy of its charter duly certified by the Commission. It shall pay the same fees and charges as domestic associations. Upon such compliance, it shall have all the rights and privileges of like domestic associations and the entrance fee shall be computed as if a charter fee.

Code 1950, § 13-290; 1956, c. 428; 1958, c. 564.

§ 13.1-338. Purchasing business of other associations, persons, firms or corporations; stock issued

Whenever an association organized hereunder with preferred capital stock shall purchase the stock or any property, or any interest in any property of any person, firm or corporation or association, it may by agreement with the other party or parties to the transaction discharge the obligation so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

Code 1950, § 13-285; 1956, c. 428.

§ 13.1-339. Merger or consolidation

Associations shall have the power to merge or consolidate with any other like associations. Such merger or consolidation shall be effected in accordance with the general provisions of law providing for the merger or consolidation of other corporations insofar as applicable, and where not applicable in a manner analogous to that set forth in said provisions. In effecting such merger or consolidation, two-thirds of the members voting thereon at any regular meeting, or special meeting called for the purpose, shall take such action as is required of stockholders. The fair cash value of the stock or membership of any dissenting member shall be taken to mean the amount to which said member would be entitled by way of distribution of assets if said association were dissolved.

Code 1950, § 13-259; 1956, c. 428.

§ 13.1-340. Sale, mortgage or other disposition of assets

The sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of an association, when made in the usual and regular course of the business of the association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

Unless otherwise provided in the articles of incorporation, a mortgage or pledge of all or any part of the property and assets, with or without the goodwill, of an association, though not made in usual and regular course of its business, may be made for money upon such terms and conditions as shall be authorized by its board of directors and no authorization or consent of members shall be required.

A sale, lease or exchange, or a mortgage or pledge for a consideration other than money, of all, or substantially all, the property and assets, with or without the goodwill, of an association, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the association shall be given to each member entitled to vote at such meeting, at least ten days prior to such meeting. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the association therefor. Such authorization shall require the vote of at least two-thirds of the

votes entitled to be cast by members present or represented by proxy at such meeting. After such authorization by a vote of members, the board of directors, nevertheless in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

1956, c. 428.

§ 13.1-341. Taxes

Nothing in this article shall be construed as exempting any association from the payment of license, income, property or other taxes, state and local; and the designation of any such association in this article as nonprofit shall not be construed as exempting it from state income taxation, notwithstanding any other provision of law. For the privilege of storing or marketing agricultural products, an association shall, however, pay only an annual license fee of ten dollars which shall be in lieu of all other corporation, franchise and income taxes, taxes on capital, taxes and charges upon reserves held by the association, and all state and local license taxes on that part of its business which is solely and exclusively the storing or marketing of agricultural products. Marketing of agricultural products shall include the functions involved in transferring title and in moving goods from producer to consumer, including buying, selling, processing, packing, storing, transporting, standardizing, financing, risk bearing and supplying market information.

Code 1950, § 13-291; 1956, c. 428; 1982, c. 266.

§ 13.1-342. Reserved

Reserved.

§ 13.1-343. Application of general corporation laws

The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) shall, to the extent that they are not in conflict with or inconsistent with the provisions of this Act, apply to associations subject to this Act, each of which shall establish and maintain a registered office and a registered agent and file the annual reports required by such Acts.

Code 1950, § 13-250; 1956, c. 428.

§ 13.1-344. Existing associations continued

All associations organized under or that have adopted the provisions of Chapter 15, Title 13, as heretofore amended, which are in existence at the date of the enactment of this Act, shall continue in existence subject to the terms of this Act.

1956, c. 428.

§ 13.1-345. Verification no longer required; signing instrument containing misstatement as perjury

A requirement in this chapter that an instrument be verified by oath need not be complied with after July 1, 1958. A person who signs any instrument delivered to the Commission as required by this chapter knowing it to contain a misstatement of fact shall be guilty of perjury.

1958, c. 564.

§§ 13.1-346 through 13.1-400. Reserved
Reserved.

Chapter 3.1 - AUTOMOBILE CLUBS [Repealed]

§§ 13.1-400.1 through 13.1-400.10. Repealed
Repealed by Acts 2016, c. 250, cl. 2.

Chapter 4 - UNIFORM STOCK TRANSFER ACT [Repealed]

§§ 13.1-401 through 13.1-423. Repealed
Repealed by Acts 1964, c. 219.

Chapter 4.1 - UNIFORM ACT FOR THE SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS. [Repealed]

§§ 13.1-424 through 13.1-433. Repealed
Repealed by Acts 1996, c. 216.

Chapter 4.2 - SECURITIES REGISTERED IN JOINT NAMES

§ 13.1-434. Definitions
As used in this chapter:

(a) "Corporation" means a private or public corporation, association, or trust issuing a security.

(b) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation and registered as to ownership on the books of the corporation.

(c) "Transfer agent" includes any person employed or authorized to transfer securities issued by a corporation, including a registrar.

1960, c. 20.

§ 13.1-435. Corporate securities registered in joint names with right of survivorship
Whenever a security issued by a corporation organized under the laws of this Commonwealth shall be registered in the names of two or more persons as joint tenants with right of survivorship or in the names of a man and a woman as tenants by the entireties with right of survivorship and one of such persons dies, such corporation and any transfer agent of such corporation shall, upon receipt of evidence of death, be entitled to treat the survivor or survivors as the owner or owners of such security for all purposes and to cause such security to be registered in the name of such survivor or survivors regardless of any claim of right through the decedent or by his personal

representative, unless such registration shall be enjoined prior to its effectuation by a court of competent jurisdiction.

1960, c. 20.

§ 13.1-436. To what transfers of securities applicable
This chapter shall apply to all transfers of securities by transfer agents domiciled in this Commonwealth and by all corporations incorporated under the laws of this Commonwealth and their transfer agents regardless of the place of transfer or the residence or domicile of the registered owners of any such security.

1960, c. 20.

§§ 13.1-437 through 13.1-500. Reserved
Reserved.

Chapter 5 - SECURITIES ACT

Article 1 - DEFINITIONS

§ 13.1-501. Definitions
A. When used in this chapter, unless the context otherwise requires:

"Agent" means any individual who, as a director, officer, partner, associate, employee or sales representative of a broker-dealer or issuer, effects or undertakes to effect sales of securities, otherwise than on behalf of (i) an issuer either offering a security exempted by subdivision 1, 2, 3, 4, 7, 9, or 10 of subsection A of § 13.1-514 or effecting a transaction with a "qualified purchaser" as defined by the United States Securities and Exchange Commission or (ii) a broker-dealer effecting in this Commonwealth transactions limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934.

"Broker-dealer" means any person engaged in the business of selling any type of security other than an interest or unit in a condominium as defined in subdivision (c) of § 55-79.2 or cooperative housing corporation for the account of others or for his own account otherwise than with or through a broker-dealer or agent, but does not include an issuer or an agent. A bank or trust subsidiary formed under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2 shall not be considered to be a broker-dealer because the bank or trust subsidiary formed under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2 engages in any one or more of the activities specified in subparagraph (i), (ii), (iii), (iv), (v), (vi), (viii), (ix) or (x) of § 3(a)(4)(B) or in § 3(a)(5)(C) of the Securities Exchange Act of 1934 under the conditions described in connection with such laws.

"Commission" means the State Corporation Commission.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Cooperative housing corporation" means a corporation in which each member is entitled, solely by reason of his membership in the corporation, to occupy for dwelling purposes a house or an apartment in a building owned or leased or to be owned or leased by the corporation or to purchase a dwelling constructed or to be constructed by the corporation. The corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing, management, or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management, or construction of residential properties. The securities of the corporation shall be issued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are or thereupon become members.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Federal covered security" means any security described as a "covered security" in § 18 of the Securities Act of 1933.

"Guaranteed" means guaranteed as to payment of principal, interest or dividends.

"Investment advisor" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. Investment advisor also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment advisor" does not include (i) an investment advisor representative; (ii) a bank, a bank holding company as defined in the Bank Holding Company Act of 1956 which is not an investment company, a trust subsidiary organized under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2, a savings institution, a credit union, or a trust company; (iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (iv) a broker-dealer or his agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific situation of each client; (vi) any person that is a federal covered advisor; or (vii) such other persons not within the intent of this definition, as the Commission may designate by rule or determine by order pursuant to § 13.1-525.

"Investment advisor representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with (a) an investment advisor registered or required to be registered under this chapter and who does any of the following: (i) makes any recommendations or otherwise renders advice regarding securities, (ii) manages accounts or portfolios of clients, (iii) determines which recommendations or advice regarding securities should be given, (iv) prepares reports or analyses concerning securities, (v) solicits, offers or negotiates for the sale of or sells investment advisory services, or (vi) supervises employees who perform any of the foregoing; or (b) a federal covered advisor, subject to the limitations of § 203 A of the Investment Advisers Act of 1940, as the Commission may designate by rule or order. "Investment advisor representative" does not include such other persons employed by or associated with either an investment advisor or a federal covered advisor not within the intent of this definition as the Commission may designate by rule or determine by order pursuant to § 13.1-525.

"Issuer" means any person who issues or proposes to issue a security, except that:

1. With respect to certificates of deposit, voting trust certificates or collateral trust certificates, and with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions, or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of manager;

2. With respect to equipment trust certificates or like securities, "issuer" means the person by whom the equipment is or is to be used;

3. With respect to oil, gas or other mineral leases, rights or royalties or interests therein, "issuer" means the owner of any such lease, right, royalty or interest (whether whole or fractional) who creates financial interests therein for the purpose of offering to more than five persons.

"Nonissuer distribution" means any transaction not directly or indirectly for the benefit of the issuer.

"Offer" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

"Person" means an individual, a partnership, a corporation, an unincorporated association, a government, a subdivision of a government, or a trust in which the interests of the beneficiaries are evidenced by securities.

"Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

"Securities Act of 1933," "Securities Exchange Act of 1934," "Bank Holding Company Act of 1956," "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of those names as now or hereafter amended.

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate of subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; oil, gas or other mineral lease, right or royalty, or any interest therein; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. However, this definition shall not apply to any insurance policy, endowment policy, annuity contract, variable annuity contract or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Commission's Bureau of Insurance when the form of such policy or contract has been duly filed with the Bureau as now or hereafter required by law.

"State" means any state, territory or possession of the United States, including the District of Columbia and Puerto Rico.

B. For the purposes of Article 4 (§ 13.1-507 et seq.) of this chapter, the terms defined in this section shall not include negotiations or agreements between the issuer and any underwriter or among underwriters; or any transaction by the pledgee of a security unless made directly or indirectly for the benefit of the issuer.

C. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be deemed to constitute part of the subject of the purchase and to have been offered and sold for value.

D. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or of another person, and every sale or offer, of a security which gives the holder thereof a present or future right or privilege to convert the security into another security of the same issuer or of another person, shall be deemed to include an offer of such other security.

Code 1950, § 13-106; 1956, c. 428; 1966, c. 186; 1974, cc. 409, 479; 1975, c. 75; 1976, c. 229; 1987, c. 678; 1988, c. 536; 1990, c. 5; 1991, cc. 223, 418; 1992, c. 19; 1997, c. 279; 1998, c. 22; 2001, c. 722.

Article 2 - UNLAWFUL PRACTICES

§ 13.1-502. Unlawful offers and sales

It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly,

(1) To employ any device, scheme or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

1956, c. 428.

§ 13.1-503. Unlawful advice

A. It shall be unlawful for any person who receives directly or indirectly any consideration from another person primarily for advising such other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

1. To employ any device, scheme, or artifice to defraud such other person,

2. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon such other person,

3. Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment advisor in relation to such transaction, or

4. To engage in dishonest or unethical practices as the Commission may define by rule.

B. In the solicitation of advisory clients, it shall be unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

C. Except as may be permitted by rule or order of the Commission, it shall be unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing:

1. That the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

2. That no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and

3. That the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

D. Subdivision 1 of subsection C of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

E. "Assignment" as used in subdivision 2 of subsection C of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a

controlling block of the assignor's outstanding voting securities by a security holder of the assignor. If the investment advisory is a partnership, no assignment of an investment advisory contract is considered to result from the death of withdrawal of a minority of the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

F. The Commission may by rule or order adopt exemptions from subdivision 3 of subsection A and subdivisions 1, 2 and 3 of subsection C of this section where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

1956, c. 428; 1987, c. 678.

Article 3 - BROKERS-DEALERS, INVESTMENT ADVISORS, INVESTMENT ADVISOR REPRESENTATIVES AND AGENTS

§ 13.1-504. Registration

A. It shall be unlawful for any person to transact business in this Commonwealth as (i) a broker-dealer or an agent, except in transactions exempted by subsection B of § 13.1-514, unless he is so registered under this chapter; (ii) an investment advisor or investment advisor representative unless he is so registered under this chapter; or (iii) a federal covered advisor unless he has filed such documents and paid such fee as the Commission by rule or order may require.

B. The registration of an agent shall be deemed effective only so long as he is connected with a specified broker-dealer registered under this chapter or a specified issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, both the agent and the broker-dealer or issuer shall promptly notify the Commission. An agent who changes his connection from one broker-dealer or issuer to another shall be required to file a new application for registration and pay the necessary fee in accordance with § 13.1-505. It shall be unlawful for any broker-dealer or issuer to employ an unregistered agent. No agent shall be employed by more than one broker-dealer or issuer, except pursuant to such rules or regulations as the Commission shall prescribe.

C. The registration of an investment advisor representative shall be deemed effective only so long as he is connected with an investment advisor registered under this chapter or a federal covered advisor. When an investment advisor representative begins or terminates a connection with an investment advisor, the investment advisor shall promptly notify the Commission. When an investment advisor representative begins or terminates a connection with a federal covered advisor, the investment advisor representative shall promptly notify the Commission. An investment advisor representative who changes his connection from one investment advisor or federal covered advisor to another shall be required to file a new application for registration and pay the necessary fee in accordance with § 13.1-505. It shall be unlawful for (i) any person who is required to be registered as an investment advisor under this chapter to employ an unregistered

investment advisor representative or (ii) a federal covered advisor to employ, supervise, or associate with an unregistered investment advisor representative having a place of business in the Commonwealth. No investment advisor representative shall be employed by more than one investment advisor or federal covered advisor except pursuant to such rules or regulations as the Commission shall prescribe.

1956, c. 428; 1974, cc. 374, 479; 1979, c. 312; 1982, c. 407; 1987, c. 678; 1991, cc. 223, 281, 418; 1997, c. 279; 1998, cc. 22, 255; 2003, c. 595; 2007, c. 458.

§ 13.1-504.1. Brokerage services of savings and loan associations, savings banks or service corporations of either; when registration not required

A savings and loan association or a savings bank, or the service corporation of either, may enter into an agreement with any person or entity which is a registered broker-dealer under the applicable provisions of this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to customers of the association or savings bank. The existence of such an agreement shall not of itself be sufficient to require employees of the association, savings bank or service corporation to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1984, c. 334.

§ 13.1-504.2. Broker-dealer services provided by credit unions; when registration not required

A credit union may enter into an agreement with any person or entity which is a registered broker-dealer under this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to members of the credit union. The existence of such an agreement shall not of itself be sufficient to require employees of the credit union to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1988, c. 338.

§ 13.1-505. Procedure for registration

A. A broker-dealer, investment advisor, investment advisor representative or agent may be registered after filing with the Commission, or any entity designated by order or rule of the Commission, an application containing such relevant information as the Commission may require. He shall be registered if the Commission finds that:

1. He is a person (and, in the case of a corporation or partnership, the natural persons who are the officers, directors or partners or who otherwise control such corporation or partnership are persons) of good character and reputation;

2. He intends to maintain his business records in accordance with the rules of the Commission;

3. His business knowledge and conduct and his financial responsibility are such that he is a suitable person to engage in the business;

4. He has supplied all information required by the Commission;

5. He is not subject to the revocation provisions of § 13.1-506; and

6. He has paid the necessary fee.

B. The Commission may require as a condition of registration or renewal of registration the filing by a broker-dealer or investment advisor of a reasonable surety or other bond conditioned as the Commission may require for the protection of investors not in any case exceeding $25,000 in penalty amount as evidence of financial responsibility except that no bond shall be required where the net worth of the broker-dealer or investment advisor exceeds $25,000.

C. The Commission may require as a condition of registration the passing of a written examination as evidence of knowledge of the securities or investment advisory business.

D. All registrations and renewals thereof shall expire annually in accordance with rules and regulations promulgated by the Commission.

E. Each application for a renewal of a registration shall be filed with the Commission or any entity designated by order or rule of the Commission. Upon application for a renewal of a registration, the Commission shall have jurisdiction to determine, as of such time, the propriety of the renewal registration.

F. Each application for a registration or renewal of a registration as a broker-dealer or investment advisor shall be accompanied by a nonrefundable fee of $200, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

G. Each application for a registration or renewal of a registration as an agent or investment advisor representative shall be accompanied by a nonrefundable fee of not less than thirty and not more than fifty dollars, as established by order or rule of the Commission, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

H. For the purposes of registration as a broker-dealer or an investment advisor, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with § 50-74.

I. The Commission shall either grant or deny each application for registration within thirty days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as ninety days by giving written notice to the applicant. No more than three such extensions may be made on any one application.

An extension of the initial thirty-day period, not to exceed ninety days, shall be granted upon written request of the applicant.

J. A renewal of registration shall be granted as a matter of course upon receipt of the proper application and fee together with any surety bond that the Commission may pursuant to subsection B require unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.

1956, c. 428; 1974, cc. 382, 479; 1980, c. 222; 1981, c. 244; 1984, c. 771; 1987, c. 678; 1990, c. 5; 1991, c. 281; 1992, c. 18; 1997, c. 279.

§ 13.1-505.1. Post-registration provisions

With respect to investment advisors, the Commission may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Commission in its discretion, information furnished to clients or prospective clients of an investment advisor that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

1987, c. 678; 1997, c. 279.

§ 13.1-506. Revocation of registration

The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the registration of a broker-dealer, investment advisor, investment advisor representative or agent, or refuse to renew a registration if an application for renewal has been or is to be filed, if it finds that such an order is in the public interest and that such broker-dealer, investment advisor or any partner, officer or director of such broker-dealer or investment advisor, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by such broker-dealer or investment advisor or that such agent or investment advisor representative:

1. Has engaged in any fraudulent transaction;

2. Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

3. Is a person for whom a conservator or guardian has been appointed and is acting;

4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a security or any aspect of the securities or investment advisory business or any felony;

5. Has failed to furnish information or records requested by the Commission concerning his conduct of the securities or investment advisory business; or

6. [Repealed.]

7. Has failed to conduct his securities or investment advisory business in accordance with the rules of the Commission.

1956, c. 428; 1974, c. 479; 1981, c. 244; 1987, c. 678; 1997, c. 921.

Article 4 - REGISTRATION OF SECURITIES

§ 13.1-507. Registration requirement; exemptions

It shall be unlawful for any person to offer or sell any security unless (i) the security is registered under this chapter, (ii) the security or transaction is exempted by this chapter, or (iii) the security is a federal covered security.

Code 1950, § 13-110; 1956, c. 428; 1997, c. 279; 2003, c. 595.

§ 13.1-508. Registration by notification

A. The following securities may be registered by notification:

1. Any security whose issuer (which, for the purposes of this subsection, shall include any predecessor by merger, consolidation or acquisition of assets) has been in continuous operation for at least five years if there has been no default within the past three fiscal years in the payment of principal, interest or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and (where the security being registered does not have a fixed maturity or a fixed interest or dividend provision) (a) the issuer is a corporation which has assets of at least $500,000 after deduction of depreciation and other reserves, which has a net worth of at least $10,000, which is incorporated under the laws of this Commonwealth and which conducts a substantial portion of its business in this Commonwealth, or (b) the issuer during its past three fiscal years has had average net earnings applicable to all securities without a fixed maturity or a fixed interest or dividend provision (whether of one or more classes) outstanding at the date when the registration statement is filed (i) aggregating at least five percent of the amount of such outstanding securities as measured by their maximum public offering price or their market price on a day within 30 days of the date of filing the registration statement, whichever is higher, or their book value on a day within 90 days of the date of filing the registration statement if there is neither a readily determinable market price nor a public offering price or (ii) if no such securities are outstanding, then aggregating at least five percent of the amount of such securities then offered for sale based upon the maximum price at which such securities are to be offered for sale; and all accounting determinations required by this section shall be made in accordance with generally accepted accounting practices. Noncumulative preferred stock shall be deemed for the purposes of this subsection a security with a fixed dividend provision.

2. Any security registered for nonissuer distribution if (i) any security of the same class has ever been registered or (ii) the security being registered was originally issued pursuant to an exemption in this chapter.

B. A registration statement under this section shall state the facts showing eligibility of the securities for registration by notification, the amount and maximum offering price of the securities proposed to be offered in this Commonwealth, and a copy of any prospectus to be used in connection with the offering. It shall be accompanied by a fee of 1/20 of one percent of the maximum offering price of the securities proposed to be offered in this Commonwealth; provided that the fee shall not be less than $100 nor more than $250.

C. If no stop order is in effect and no proceeding for the issuance of a stop order is pending, a registration statement under this section shall automatically become effective at three o'clock in the afternoon of the second full business day after filing of the registration statement or the last amendment thereto or at such earlier time as the Commission may determine by order, letter, telegram, or electronic means.

D. The Commission may require that a prospectus be used in connection with the offering. If the Commission requires the use of a prospectus, it shall be unlawful to sell any security registered under this section except upon delivery of a prospectus to each person to whom an offer is made. The prospectus shall contain such information specified in subsection (b) of § 13.1-510 as may be designated by the Commission as necessary for the protection of investors and such additional information as the Commission may require.

1956, c. 428; 1981, c. 168; 1984, c. 771; 1993, c. 179; 2003, c. 595.

§ 13.1-509. Registration by coordination

A. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination if no stop order or refusal order is in effect against such registration statement and no proceeding looking toward such an order is pending.

B. A registration statement under this section shall consist of the prospectus filed under the Securities Act of 1933 together with all amendments or supplements thereto and a statement of the amount and maximum offering price of the securities proposed to be offered in this Commonwealth. The Commission may require that it also include the articles of incorporation and bylaws, any agreements with underwriters, any indenture or any other instrument governing the issuance of the security to be registered, a specimen of the security and any other information documents filed under the Securities Act of 1933. The registration statement shall be accompanied by a fee of one-twentieth of one percent of the maximum aggregate offering price of the securities proposed to be offered in this Commonwealth; provided that the fee shall not be less than $200 nor more than $700, except that in the case of a unit investment trust, as that term is defined in the Investment Company Act of 1940, the fee shall not be less than $400 nor more than $1,000.

C. A registration statement under this section shall automatically become effective at the moment the federal registration statement becomes effective if all of the following conditions are satisfied: (i) No stop order is in effect and no proceeding for the issuance of a stop order is pending and (ii)

the registration statement and all amendments other than a final amendment (hereinafter termed the "price amendment") which is limited substantially to information concerning the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price have been on file with the Commission, or any entity designated by order or rule of the Commission, for at least three full business days. Unless the definitive information concerning price and other matters dependent thereon has been so on file with the Commission or such entity, the registrant shall promptly notify the Commission by telephone, telegram, or electronic means of the date and time when the federal registration statement became effective and the content of the federal price amendment, if any, and shall promptly file a post-effective amendment containing the information in the federal price amendment but exclusive of exhibits. Failure to receive such notification or such post-effective amendment if required shall be grounds for the entry of a stop order retroactively denying effectiveness to the registration statement, without notice or hearing, if the Commission promptly notifies the registrant by telephone, telegram, or electronic means (and promptly confirms by letter, telegram, or electronic means when it notifies by telephone) of the issuance of such an order. If the registrant proves that he complied with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be void as of the time of its entry. The Commission may, by order, letter, telegram, or electronic means, accelerate the effectiveness of any registration statement and may waive any or all of the conditions specified in clause (ii) above. If the federal registration has become effective before all of such conditions have been satisfied and they are not so waived, the registration statement under this section shall automatically become effective as soon as all of such conditions have been satisfied.

1956, c. 428; 1984, c. 771; 1990, c. 90; 1994, c. 10; 2003, c. 595.

§ 13.1-510. Registration by qualification

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain that part of the following information as required by the Commission:

(1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state (or foreign jurisdiction) and date of its organization; the general character of its business; and a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer (or person occupying a similar status or performing similar functions): his name, address and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material

interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) With respect to persons covered by subdivision (2) of this subsection: the remuneration paid during the past twelve months and estimated to be paid during the ensuing twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all such persons in the aggregate;

(4) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) of this subsection other than his occupation;

(5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2) of this subsection, any amount paid to him within such period or intended to be paid to him and the consideration for any such payment;

(6) With respect to any person other than the issuer on whose behalf any part of the offering is to be made: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(7) The capitalization and long term debt (on both a current and a pro forma basis) of the issuer and any subsidiary, including (i) a description of each class of security outstanding or being registered or otherwise offered, and (ii) a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any such subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters in connection with the offering) or, if such discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which such proceeds are to be used by the issuer; the amount to be used for each purpose; the order of priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve such purposes; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with such acquisition and the amounts of such commissions and any other expense in connection with such acquisition (including the cost of borrowing money to finance such acquisition);

(10) A description of any stock options (or other security options) outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6) or (8) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(11) The dates of, parties to and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or sales literature intended as of the effective date to be used in connection with the offering;

(13) A specimen of the security being registered; a copy of the issuer's articles of incorporation and bylaws (or their substantial equivalents) as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) An opinion of counsel as to the legality of the security being registered which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if such business were the registrant;

(16) Such additional information as the Commission may require.

(c) A registration statement shall state the amount of securities to be offered in this Commonwealth and shall be accompanied by a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are proposed to be offered in this Commonwealth; provided that the fee shall not be less than $250 nor more than $500.

(d) A registration statement under this section shall become effective when the Commission so orders.

(e) It shall be unlawful to sell any security registered under this section that constitutes the whole or a part of an unsold allotment or subscription by a broker-dealer as a participant in the underwriting of such securities except upon delivery to the purchaser of a prospectus. The prospectus shall contain such part of the information specified in subsection (b) as may be designated by the Commission as necessary for the protection of investors.

(f) The Commission shall have authority in its discretion to require that sales be made only pursuant to a subscription contract the form of which shall have been filed as an exhibit to the registration statement. If the Commission requires a subscription contract, it shall be unlawful to sell any security registered under this section except pursuant to such a subscription contract duly signed by the purchaser, a copy of which shall be delivered to him.

(g) [Repealed.]

(h) If any prospectus, document or exhibit filed as provided in this section discloses that any of the securities sought to be registered by qualification, or as much as twenty-five percent of any class of the securities of the issuer to be outstanding, were or are intended to be issued for any patent right, copyright, trademark, process, formula, goodwill or other intangible assets, or for organization or promotion fees or expenses, the Commission may require that such securities shall be delivered in escrow to some satisfactory depository under an escrow agreement. The owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until the issuer in any period of thirty-six consecutive months earns an annual average of six percent of the public offering price times all shares of common stock then outstanding plus those to be outstanding through the exercise of warrants or options as computed under normal and customary accounting procedures or upon order of the Commission, when no circumstance is apparent which, in the opinion of the Commission, would warrant continuation of the escrow. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full. If any securities sought to be registered by qualification are to be sold for the account of the issuer, and not by underwriters who have or at the time of offering shall have purchased such securities from the issuer, the Commission may require that the proceeds from the sale of such securities be delivered in escrow to some satisfactory depository until all or a reasonable portion of the total securities originally proposed to be offered and sold shall have been sold and paid for.

For the purposes of this section, such securities shall be deemed to have been sold and paid for at such time as the subscribers therefor deliver to, or for the benefit of, the issuer, an amount equal to the purchase price specified for such securities either in cash, a draft, check or note (other than any such instrument which is drawn without recourse) or any combination thereof.

1956, c. 428; 1982, c. 362; 1983, c. 517; 1984, c. 771; 1993, c. 180 .

§ 13.1-511. Effectiveness and reports

A registration statement filed under this article may be filed by the issuer, any other person on whose behalf the offer is to be made or by any registered broker-dealer. When securities are registered, they may be offered and sold by the issuer, by such other person or by any registered broker-dealer, whether or not named in the registration statement. Every registration statement shall remain effective until revoked by the Commission or until terminated upon request of the registrant with the consent of the Commission. So long as a registration statement remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. So long as the registration statement remains effective, the Commission may require the registrant to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement. The Commission may require such information to be included in the prospectus.

1956, c. 428; 1991, c. 223; 2003, c. 595.

§ 13.1-512. Repealed

Repealed by Acts 2003, c. 595.

§ 13.1-513. Stop orders

(a) The Commission may issue a stop order denying effectiveness to, or revoking the effectiveness of, any registration statement if it finds that such an order is in the public interest and that:

(1) The registration statement together with any amendments, or any report filed by the registrant or any other document filed in connection with the registration statement contained any statement which was, at the time and in the circumstances in which it was made, false or misleading with respect to any material fact or omitted to state any material fact required to be stated therein;

(2) The applicant or registrant or any agent, partner, officer or director of the applicant or registrant (or any person occupying a similar status or performing similar functions) or any person directly or indirectly controlling or controlled by the applicant or registrant has violated, in connection with the offering, any provision of this chapter or of any other law applicable to the offering, or any rule, order or condition lawfully imposed under this chapter;

(3) Any person specified in subdivision (2) of this subsection has failed to furnish any information lawfully requested by the Commission;

(4) The right to sell the securities which are the subject of the registration statement has been denied or revoked or is suspended under any federal act applicable to the offering (and such denial, revocation or suspension is still in effect);

(5) The issuer is insolvent, either in the sense that its liabilities exceed its assets or in the sense that it cannot meet its obligations as they mature;

(6) The issuer's business includes or probably will include activities which are forbidden by law;

(7) The offering has worked or tended to work a fraud upon investors or probably will so operate; or

(8) Where a security is to be or has been registered by notification, it is not eligible for such registration.

(b) No stop order shall be entered without reasonable notice to the applicant or registrant.

(c) In any proceeding under this section, the Commission may refrain from issuing or, after issuing, may revoke a stop order on condition that the persons against whom it is directed correct the matters complained of on which it is based.

1956, c. 428; 1960, c. 71.

Article 5 - MISCELLANEOUS

§ 13.1-514. Exemptions

A. The following securities are exempted from the securities registration requirements of this chapter:

1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by such issuer or guarantor;

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, the International Bank for Reconstruction and Development, or any national bank, or any bank or trust company organized under the laws of any state or trust subsidiary organized under the provisions of Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2;

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or savings bank, or by any savings and loan association or savings bank which is organized under the laws of this Commonwealth;

5. Any security issued or guaranteed by an insurance company licensed to transact insurance business in this Commonwealth;

6. Any security issued by any credit union, industrial loan association or consumer finance company which is organized under the laws of this Commonwealth and is supervised and examined by the Commission;

7. Any security issued or guaranteed by any railroad, other common carrier or public service company supervised as to its rates and the issuance of its securities by a governmental authority of the United States, any state, Canada or any Canadian province;

8. Any security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants admitted to trading in any of said exchanges; or any warrant or right to subscribe to any of the foregoing securities;

9. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, or any guaranty of such paper or of any such renewal;

10. Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan. The Commission may by rule or order, as to any security issued pursuant to such plan, specify or designate persons eligible to participate in such plan;

11. Any security issued by a cooperative association organized as a corporation under the laws of this Commonwealth;

12. Any security listed on an exchange registered with the United States Securities and Exchange Commission or quoted on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission and approved by regulations of the State Corporation Commission;

13. Any security issued by any issuer organized under the laws of any foreign country and approved by rule or regulation of the Commission.

B. The following transactions are exempted from the securities, broker-dealer and agent registration requirements of this chapter except as expressly provided in this subsection:

1. Any isolated transaction by the owner or pledgee of a security, whether effected through a broker-dealer or not, which is not directly or indirectly for the benefit of the issuer;

2. Any nonissuer distribution by a registered broker-dealer and its registered agent of a security that has been outstanding in the hands of the public for the past five years, if the issuer in each of

the past three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of its current market price;

3. Any transaction by a registered broker-dealer and its registered agent pursuant to an unsolicited order or offer to buy;

4. Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire indebtedness secured thereby is offered and sold as a unit;

5. Any transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order;

6. Any offer or sale to a corporation, investment company or pension or profit-sharing trust or to a broker-dealer;

7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than 35 security holders, and if its securities have not been offered to the general public by advertisement or solicitation; or

b. To the extent the Commission by rule or order permits, any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer to not more than 35 persons in the Commonwealth during any period of 12 consecutive months, whether or not the issuer or any purchaser is then present in the Commonwealth, if the issuer or broker-dealer reasonably believes that all the purchasers in the Commonwealth are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation. The Commission may, by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to their investment intent. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed $250.

With respect to this subdivision 7, and except to the extent the Commission by rule or order may otherwise permit, the number of security holders of an issuer or the number of purchasers from an issuer, as the case may be, shall not be deemed to include the security holders of any other corporation, partnership, limited liability company, unincorporated association or trust unless it was organized to raise capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of corporations, partnerships, limited liability companies, unincorporated associations or other entities shall be a violation of this chapter if the surviving or new entity has more than 35 security holders or purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the parties thereto have been engaged in transacting business for more than two years prior to the merger or consolidation;

8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of transferable warrants issued to existing security holders and exercisable within 90 days of their issuance, if either (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this Commonwealth or (ii) the issuer first notifies the Commission in writing of the terms of the offer and the Commission does not by order disallow the exemption within five full business days after the date of the receipt of the notice;

9. Any offer (but not a sale) of a security for which registration statements have been filed, but are not effective, under both this chapter and the Securities Act of 1933; but this exemption shall not apply while a stop order is in effect or, after notice to the issuer, while a proceeding or examination looking toward such an order is pending under either act;

10. The issuance of not more than three shares of common stock to one or more of the incorporators of a corporation and the initial transfer thereof;

11. Sales of an issue of bonds, aggregating $150,000 or less, secured by a first lien deed of trust on realty situated in Virginia, to 30 persons or less who are residents of Virginia;

12. Any offer or sale of any interest in any partnership, corporation, association or other entity created solely to provide residential housing located in the Commonwealth, provided that such offer or sale is by the issuer or by a real estate broker or real estate agent duly licensed in Virginia;

13. The Commission is authorized to create by rule a limited offering exemption, the purpose of which shall be to further the objectives of compatibility with similar exemptions from federal securities regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or agents from the registration requirements of this chapter, except in the case of an agent of the issuer who either (i) receives no sales commission directly or indirectly for offering or selling the securities or (ii) effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof. Any filing made with the Commission pursuant to any exemption created under this subdivision shall be accompanied by a $250 fee;

14. The issuance of any security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or in a security;

15. Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, sale of assets, or exchange of securities;

16. Any offer or sale of a security issued by a Virginia church if the offer and sale are only to its members and the security is offered and sold only by its members who are Virginia residents and

who do not receive remuneration or compensation directly or indirectly for offering or selling the security;

17. Any offer or sale of securities issued by a professional business entity (as defined in subsection A of § 13.1-1102) to a person licensed or otherwise legally authorized to render within this Commonwealth the same professional services (as defined in subsection A of § 13.1-1102) rendered by the professional business entity. Notwithstanding the foregoing, nothing in this subdivision shall be deemed to provide that shares of stock, partnership or membership interests or other representations of ownership in a professional business entity are securities except to the extent otherwise provided by subsection A of this section;

18. Any offer that is communicated on the Internet, World Wide Web or similar proprietary or common carrier electronic system and that is in compliance with requirements prescribed by rule or order of the Commission;

19. To the extent the Commission by rule or order permits, any offer or sale to an accredited investor, as defined by the Commission, if the issuer reasonably believes before the sale that the accredited investor, either alone or with the accredited investor's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed $250;

20. Any transaction by a bank pursuant to an unsolicited offer or order to buy or sell any security, provided such transaction is not effected by an employee of the bank who is also an employee of a broker-dealer;

21. (Expires July 1, 2020) To the extent the Commission by rule or order permits, any security issued by an entity formed, organized, or existing under the laws of the Commonwealth, if:

a. The offering of the security is conducted in accordance with § 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933;

b. The offer and sale of the security are made only to residents of Virginia;

c. The aggregate price of securities in an offering under this exemption does not exceed $2 million, which sum the Commission, by rule or order, may increase or decrease;

d. The total consideration paid by any purchaser of securities in an offering under this exemption does not exceed $10,000, unless the purchaser is an accredited investor as defined by Rule 501 of the U.S. Securities and Exchange Commission's Regulation D (17 C.F.R. § 230.501). The Commission, by rule or order, may increase or decrease such limit on the total consideration to be paid by any purchaser of securities in an offering under this exemption;

e. No compensation is paid to employees, agents, or other persons for the solicitation of, or based on the sale of, securities in connection with an offering of securities under this exemption to any

person who is not registered as a broker-dealer or agent, except to the extent permitted by rule or order of the Commission;

f. Neither the issuer nor any person related to the issuer is subject to disqualification as established by the Commission by rule or order; and

g. The security is sold in an offering conducted in compliance with any conditions established by rule or order of the Commission, which may include:

(1) Restrictions on the nature of the issuer;

(2) Limitations on the number and manner of offerings;

(3) Disclosures required to be provided to investors, including disclosures of risk factors related to the issuer and the offering;

(4) Requirements that all proceeds received from purchasers be placed in escrow in a depository institution located in the Commonwealth until the minimum amount of the offering is raised;

(5) Filings with the Commission of notices and other materials related to the offering; and

(6) Requirements regarding the preparation and submission of the issuer's financial statements, including (i) the form and content of such statements and (ii) whether such statements are required to be audited or reviewed by an independent certified public accountant in accordance with generally accepted accounting principles.

The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee in an amount to be set by the Commission by rule or order, provided such amount shall not exceed $500; and

22. Any offer or sale of securities conducted in accordance with Tier 2 of federal Regulation A (17 CFR 230.251 to 230.263) promulgated under § 3(b)(2) of the Securities Act of 1933 (U.S. Securities and Exchange Commission Release No. 33-9741, 80 Fed. Reg. 21806) to the extent such securities are preempted from the registration requirements of this chapter pursuant to Tier 2 of federal Regulation A. The Commission shall by rule or order prescribe any filings with the Commission of notices, renewals, and other materials. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable filing fee not to exceed $500. The Commission shall provide information on its website regarding the differences between the exemption provided pursuant to this subdivision and the exemption provided pursuant to subdivision 21.

C. In any proceeding under this chapter, the burden of proving an exemption shall be upon the person claiming it.

Code 1950, § 13-113; 1956, c. 428; 1966, c. 186; 1970, c. 286; 1972, c. 683; 1974, cc. 86, 830; 1975, cc. 75, 500; 1976, c. 656; 1977, c. 111; 1978, c. 397; 1981, cc. 347, 356, 362; 1982, c. 262; 1983, cc. 231, 516; 1984, cc. 298, 771; 1989, c. 388; 1990, c. 6; 1991, c. 223; 1993, c. 75; 1995, cc.

208, 213, 235; 1996, c. 16; 1997, cc. 279, 538; 1999, c. 92; 2001, c. 722; 2003, c. 595; 2007, c. 457; 2015, cc. 354, 400; 2016, c. 260.

§ 13.1-514.1. Exemption of certain securities by order of Commission

A. The Commission may by order exempt from the other provisions of this chapter any security that the Commission finds:

1. Is to be offered and sold as part of a community undertaking to attract new business or industry to the community, or to establish or continue financial assistance to an existing business or industry in the community;

2. Is sponsored by the local chamber of commerce, by a local industrial development corporation or by other groups of representative local businessmen; and

3. Is to be sold mainly to persons interested in the development of the community by salesmen who receive no compensation for offering and selling the security.

B. The Commission may also exempt any security it finds that is to be offered and sold by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association.

C. The Commission may, by rule, exempt an offer, but not a sale, of a security from the securities and agent registration requirements of this chapter made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for the security. The rulemaking proceeding shall give due consideration to the provisions of the national pilot project of the North American Securities Administrators Association, Inc., relating to the solicitations of indications of interest prior to the filing of a registration statement. The written documents, broadcasts and oral representations related to solicitation of an indication of interest made to potential investors are subject to the anti-fraud provisions of § 13.1-502. If the Commission determines that such exemption should not be granted, it shall set forth the findings and conclusions upon which its decision is based in its order.

1960, c. 71; 1976, c. 656; 1993, c. 75; 1994, cc. 184, 355; 1995, c. 245; 1997, c. 289.

§ 13.1-514.2. Primacy of Virginia law to be maintained

A. Pursuant to section 6(c) of the federal Philanthropy Protection Act of 1995, Pub. L. 104-62, the laws of the Commonwealth of Virginia, which are referred to in subsections (a) and (b) of section 6 of the aforementioned federal law, shall not be preempted by such section.

B. On and after July 1, 1997, the provisions of this chapter together with any subsequent amendments thereto shall retain primacy and shall apply in all administrative and judicial actions.

1997, c. 145.

§ 13.1-515. Advertising

The Commission may require, subject to the limitations of § 222 of the Investment Advisers Act of 1940, in any particular case, any person who has published or circulated any advertisement or sales literature regarding a security, other than a federal covered security as defined in § 18(b)(2) of the Securities Act of 1933, or an investment advisory service to file copies thereof with the Commission.

1956, c. 428; 1987, c. 678; 1997, c. 279.

§ 13.1-516. Misleading filings

It shall be unlawful for any person willfully to make or cause to be made, in any document filed with the Commission or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect.

1956, c. 428.

§ 13.1-517. Consent to service of process

Every nonresident registered as a broker-dealer, investment advisor, investment advisor representative or agent shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand. Every nonresident issuer of a security registered hereunder who sells such security in this Commonwealth shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand. Service may be made on the clerk in accordance with § 12.1-19.1. A foreign corporation that has complied with § 13.1-759 or § 13.1-767 need not comply with this section.

Code 1950, §§ 13-144, 13-145; 1956, c. 428; 1958, c. 564; 1987, c. 678; 1990, c. 263; 1991, c. 672
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§ 13.1-518. Investigations; confidentiality of information and documents

A. The Commission may make such investigations within or outside of this Commonwealth as it deems necessary to determine whether any person has violated or is about to violate the provisions of this chapter or any order, rule or injunction of the Commission, and may require any broker-dealer, investment advisor, investment advisor representative, issuer or agent subject to the investigation to pay the actual costs of the investigation. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim of the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

B. Information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public.

However, nothing contained herein shall be interpreted to prohibit or limit (i) the publication of the findings, decisions, orders, judgments or opinions of the Commission; (ii) the use of any such information or documents in proceedings by or before the Commission or a hearing examiner appointed by the Commission; (iii) the disclosure of any such information or documents to any quasi-governmental entity substantially associated with law enforcement or the securities or investment advisory business approved by rule of the Commission; or (iv) the disclosure of any such information or documents to any governmental entity approved by rule of the Commission, or to any attorney for the Commonwealth, or to the Attorney General of Virginia.

Code 1950, § 13-134; 1956, c. 428; 1979, c. 379; 1987, c. 678; 1992, c. 157 .

§ 13.1-518.1. Broker-dealers and investment advisors to file certain reports with Commission

Every broker-dealer and investment advisor registered under this chapter shall file all reports made by such broker-dealers or investment advisors as the Commission, by rule, may require.

1974, c. 381; 1997, c. 279.

§ 13.1-519. Injunctions

The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue a temporary or a permanent injunction against any violation or attempted violation of any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter. For the violation of any injunction or order issued under this chapter it shall have the same power to punish for contempt as a court of equity.

Code 1950, § 13-137; 1956, c. 428; 1971, Ex. Sess., c. 1; 1992, c. 468; 1997, c. 279.

§ 13.1-520. Crimes

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter, with the intent to defraud any purchaser of securities or user of investment advisory services or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a Class 1 misdemeanor.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

Code 1950, §§ 13-152, 13-155; 1956, c. 428; 1977, c. 484; 1987, c. 678.

§ 13.1-520.1. Commission may transmit record or complaint to locality where violation occurred

The Commission may transmit the record of any proceeding or any complaint involving any violation of this Act to the attorney for the Commonwealth in the county or city wherein the violation occurred.

1974, c. 253.

§ 13.1-521. Violations punishable by the Commission

A. The Commission may, by judgment entered after a hearing on 30 days' notice to the defendant, if it is proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter, impose a civil penalty not exceeding $10,000, which shall be collectible by the process of the Commission as provided by law.

B. In addition to imposing the penalty set forth in subsection A, or without imposing such penalty, the Commission may, in any such case, revoke any authority or registration issued by the Commission to or at the instance of the defendant.

C. Each sale of a security contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the seller to rescind any such sale and to make restitution to the purchaser and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal sale, and if so, the amount of such penalty.

D. Each investment advisory contract, transaction or activity contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the investment advisor or investment advisor representative to rescind any such contract or transaction and to make restitution to the user of the investment advisory service and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal contract, transaction or activity and, if so, the amount of such penalty.

E. The provisions of subsections C and D of this section regarding rescission and restitution apply only to this chapter.

Code 1950, § 13-153; 1956, c. 428; 1987, c. 678; 1990, c. 31; 2000, c. 166; 2009, c. 566.

§ 13.1-522. Civil liabilities

A. Any person who: (i) sells a security in violation of §§ 13.1-502, 13.1-504 A, 13.1-507 (i) or (ii), 13.1-510 (e) or (f), or (ii) sells a security by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know,

and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him who may sue either at law or in equity to recover the consideration paid for such security, together with interest thereon at the annual rate of six percent, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of such security, or for the substantial equivalent in damages if he no longer owns the security.

B. Any person who (i) engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in willful and material violation of § 13.1-503, subsection A of § 13.1-504, or of any rule or order under § 13.1-505.1, or (ii) receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, shall be liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest thereon at the annual rate of six percent from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice and any other economic advantage.

C. Every person who directly or indirectly controls a person liable under subsection A or B of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every broker-dealer, investment advisor, investment advisor representative or agent who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

D. No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided, that, if any person liable by reason of subsection A, B or C of this section makes a written offer, before suit is brought, to refund the consideration paid and any loss due to any investment advice provided by such person, together with interest thereon at the annual rate of six percent, less the amount of any income received on the security or resulting from such advice, or to pay damages if the purchaser no longer owns the security, no purchaser or user of the investment advisory service shall maintain a suit under this section who has refused or failed to accept such offer within thirty days of its receipt.

E. Any tender specified in this section may be made at any time before entry of judgment.

F. Any condition, stipulation or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void.

G. The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Code 1950, § 13-150; 1956, c. 428; 1987, c. 678; 1997, c. 279.

§ 13.1-523. Rules and forms

A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications and reports, and defining accounting, technical and trade terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter. Among other things, the Commission shall have authority, for the purposes of this chapter, to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify securities, persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such rules and forms shall be available for distribution at the office of the Commission either in printed or electronic format.

C. No provision of this chapter imposing any liability shall apply to any act done or omitted in conformity with any rule of the Commission, notwithstanding that such rule may, after such act or omission, be amended, rescinded or found for any reason to be invalid.

1956, c. 428; 2003, c. 595.

§ 13.1-523.1. Commission authority to regulate securities and investment advisory activities

The Commission shall have all the power, authority and jurisdiction reserved to or conferred upon the states by the federal National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (1996)) to regulate securities and investment advisory activities, including the authority to require the registration of persons and securities, the filing of documents, notices, reports and information, and the payment of fees, and to exercise its administrative, investigative, judicial and legislative powers with respect thereto. The Commission shall have the authority to make, amend and rescind such rules and forms in conformance with the National Securities Markets Improvement Act of 1996 as may be necessary for the regulation of securities and investment advisory activities and transactions within its jurisdiction.

1997, c. 279.

§ 13.1-524. Certain records of Commission available to public; admissibility of copies; destruction

The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission. But papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

1956, c. 428.

§ 13.1-525. Official interpretations

The Commission shall have jurisdiction, upon written application, payment of a filing fee of $500 and submission of such data as may be necessary for the purpose, to determine whether or not (i) a particular security or transaction is exempt from the registration requirements of this chapter, (ii) the offer or sale of a particular security would be lawful, or (iii) a person is an investment advisor or an investment advisor representative. Its determination shall be made by order, which, subject to the right of appeal, shall be conclusive on the same state of facts in any court in which the matter may come for adjudication, whether in a civil or a criminal case.

Code 1950, § 13-112; 1956, c. 428; 1984, c. 771; 1992, c. 19 .

§ 13.1-525.1. Fees to cover expense of regulation

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapters 6 (§ 13.1-528 et seq.) and 8 (§ 13.1-557 et seq.) of this title, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

§ 13.1-526. Transition

Registrations of dealers and agents under prior law shall continue as registrations as broker-dealers and agents under this chapter until April 30 following the effective date of this chapter. Licenses issued under § 13-128 of the Code of 1950 shall continue in effect until April 30 following the effective date of this chapter. The exemption provided for regularly established dealers by § 13-113 (11), whenever the requirements of §§ 13-116 to 13-121 inclusive have been complied with prior to the effective date of this chapter, shall continue in effect until April 30 following the effective date of this chapter and all securities for which a registration is in effect pursuant to that exemption on the effective date of the repeal of § 13-113 (11) shall be deemed to have been registered by notification under this chapter. But such registrations, licenses and exemptions may be terminated by the Commission for causes justifying termination of registrations under this chapter.

1956, c. 428.

§ 13.1-527. Short title
This chapter may be cited as the Securities Act.

1956, c. 428.

§ 13.1-527.01. Repealed
Repealed by Acts 2015, c. 709, cl. 2.

Article 6 - DIVISION OF SECURITIES COUNSEL

§ 13.1-527.1. Division created; duties
There is hereby created in the office of the Attorney General a Division of Securities Counsel.

The duties of such Division shall be to provide legal and technical assistance to an attorney for the Commonwealth, in the preparation for a prosecution of and the prosecution of a violation of this title; provided, however, such assistance shall be rendered only upon the request of the attorney for the Commonwealth.

1974, c. 253.

§ 13.1-527.2. Attorneys, employees and consultants
The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, as he may deem necessary for the operation of the Division of Securities Counsel to carry out its functions.

1974, c. 253.

§ 13.1-527.3. Commission to provide technical assistance
The State Corporation Commission shall provide technical assistance to the Division of Securities Counsel in its investigation and preparation of a prosecution under the provisions of this title.

1974, c. 253.

Chapter 6 - TAKE-OVER-BID DISCLOSURE ACT [Repealed]

§§ 13.1-528 through 13.1-541. Repealed
Repealed by Acts 1989, c. 408 .

Chapter 7 - PROFESSIONAL CORPORATIONS

§ 13.1-542. Legislative intent [Not set out]
Not set out. (1970, c. 77.)

§ 13.1-542.1. Practice of certain professions by corporations
Unless otherwise prohibited by law or regulation, the professional services defined in subsection A of § 13.1-543 may be rendered in this Commonwealth by:

1. A corporation organized as a professional corporation pursuant to the provisions of this chapter;

2. A foreign corporation that has obtained a certificate of authority pursuant to the provisions of this chapter;

3. A corporation organized pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of this title; or

4. A foreign corporation that has obtained a certificate of authority pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of this title.

2003, c. 678.

§ 13.1-543. Definitions

A. As used in this chapter:

"Eligible employee stock ownership plan" means an employee stock ownership plan as such term is defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, sponsored by a professional corporation and with respect to which:

1. All of the trustees of the employee stock ownership plan are individuals who are duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter; however, if a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, which special independent trustee shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict;

2. The employee stock ownership plan provides that no shares, fractional shares, or rights or options to purchase shares of the professional corporation shall at any time be issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, unless such shares are transferred as a plan distribution to a plan beneficiary and subject to immediate repurchase by the professional corporation, the employee stock ownership plan or another person authorized to hold such shares; however:

a. With respect to a professional corporation rendering the professional services of public accounting or certified public accounting:

(1) The employee stock ownership plan may permit individuals who are not duly licensed or otherwise legally authorized to render these services to participate in such plan, provided such individuals are employees of the corporation and hold less than a majority of the beneficial interests in such plan; and

(2) At least 51% of the total of allocated and unallocated equity interests in the corporation sponsoring such employee stock ownership plan are held (i) by the trustees of such employee stock ownership plan for the benefit of persons holding a valid CPA certificate as defined in § 54.1-4400, with unallocated shares allocated for these purposes pursuant to § 409(p) of the Internal Revenue Code of 1986, as amended, or (ii) by individual employees holding a valid CPA certificate separate from any interests held by such employee stock ownership plan; and

b. With respect to a professional corporation rendering the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers, the employee stock ownership plan may permit individuals who are not duly licensed to render the services of architects, professional engineers, land surveyors, or landscape architects, or individuals legally authorized to use the title of certified interior designers to participate in such plan, provided such individuals are employees of the corporation and together hold not more than one-third of the beneficial interests in such plan, and that the total of the shares (i) held by individuals who are employees but not duly licensed to render such services or legally authorized to use a title and (ii) held by the trustees of such employee stock ownership plan for the benefit of individuals who are employees but not duly licensed to render such services or legally authorized to use a title, shall not exceed one-third of the shares of the corporation; and

3. The professional corporation, the trustees of the employee stock ownership plan, and the other shareholders of the professional corporation comply with the foregoing provisions of the plan.

"Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under whose laws the entity is formed to render the same professional service as that for which a professional corporation or professional limited liability company may be organized, including, but not limited to, (i) a professional limited liability company as defined in § 13.1-1102, (ii) a professional corporation as defined in this subsection, or (iii) a partnership that is registered as a registered limited liability partnership registered under § 50-73.132, all of the partners of which are duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional corporation" means a corporation whose articles of incorporation set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers, land surveyors, or landscape architects, or using a title other than that of certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its shareholders or members only individuals or professional business entities that are duly licensed or otherwise legally authorized to render the same professional service as the corporation, including the trustees of an eligible employee stock ownership plan or (ii) organized under this chapter for the sole and specific purpose of rendering the professional services of architects, professional engineers, land surveyors, or landscape architects, or using the title of certified interior

designers, or any combination thereof, and at least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer, land surveyor, or landscape architect, including the trustees of an eligible employee stock ownership plan, or by persons legally authorized within the Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter or under Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, optometry, physical therapy, the behavioral science professions, and audiology or speech pathology, and all of whose shares are held by or all of whose members are individuals or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders mental health services, including the trustees of an eligible employee stock ownership plan; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology, or nursing, as the case may be.

"Professional service" means any type of personal service to the public that requires as a condition precedent to the rendering of such service or use of such title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified interior designers, public accountants, certified public accountants, attorneys-at-law, insurance consultants, audiologists or speech pathologists, and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional service:

1. Architects, professional engineers, and land surveyors; and

2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1; physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1; practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1; and one or more clinical nurse specialists who render mental health services, licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and are registered with the Board of Nursing.

B. (Effective until October 1, 2016) Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23-14.

B. (Effective October 1, 2016) Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23.1-1101.

1970, c. 77; 1972, c. 180; 1980, cc. 701, 757; 1981, c. 217; 1985, c. 576; 1989, c. 665; 1990, cc. 481, 595; 1992, cc. 13, 16; 1994, c. 349; 1999, c. 83; 2000, cc. 194, 688, 763; 2003, c. 678; 2006, cc. 672, 715; 2008, c. 265; 2009, c. 309.

§ 13.1-544. Who may organize and become shareholder

A. An individual or group of individuals (i) duly licensed or otherwise legally authorized to render the same professional services other than those of architects, professional engineers or land surveyors, or to use a title other than those of certified landscape architects or certified interior designers, of which at least one is duly licensed or otherwise legally authorized to render such professional services within the Commonwealth, or (ii) complying with the provisions of § 13.1-549 and duly licensed to render within the Commonwealth the professional services of architects, professional engineers or land surveyors, or legally authorized to use within the Commonwealth the title of certified landscape architects or certified interior designers, or any combination thereof, may organize a professional corporation for pecuniary profit under the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title or organize a professional corporation as a nonstock corporation under the provisions of Chapter 10 (§ 13.1-801 et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent

with the provisions of this chapter, which are applicable to the practice of that profession in the corporate form.

B. An eligible employee stock ownership plan or any individual or group of individuals described in clause (i) or (ii) of subsection A may become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent with the provisions of this chapter, that are applicable to the practice of that profession in the corporate form.

C. Any individual or group of individuals described in clause (i) or (ii) of subsection A may become a member or members of a professional corporation organized as a nonstock corporation under the provisions of Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering such professional services, subject to any laws, not inconsistent with the provisions of this chapter, that are applicable to the practice of that profession in the corporate form.

1970, c. 77; 1981, c. 58; 1989, c. 665; 1994, c. 349; 2000, c. 763; 2006, cc. 672, 715.

§ 13.1-544.1. Use of initials "P.C." or "PC" in corporate name

Any professional corporation as defined in § 13.1-543 may, but is not required to, use the initials "P.C." or "PC," or the phrase "professional corporation" or "a professional corporation," at the end of its corporate name. Such initials or phrase may be used in the place of any word or abbreviation required by subsection A of § 13.1-630.

1972, c. 577; 1973, c. 136; 1981, c. 58; 2002, c. 77; 2003, cc. 592, 678.

§ 13.1-544.2. Certificate of authority for foreign professional corporations

A. Notwithstanding any other provision of this chapter, a foreign professional corporation, organized under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in subsection A of § 13.1-543, may apply for and obtain a certificate of authority to render such professional services in Virginia on the following terms and conditions:

1. Only stockholders and employees licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia.

2. The professional corporation must meet every requirement of this chapter except the requirement that its stockholders be licensed to perform the professional service in this Commonwealth.

3. The powers of any foreign professional corporation admitted under this section shall not exceed the powers permitted to domestic professional corporations under this chapter.

B. In order to qualify, a foreign professional corporation shall make application to the Commission as provided in § 13.1-759 and shall make such application for and secure a certificate of authority as may be required by § 13.1-549; and, in addition, shall be required to set forth the name and address of each stockholder of the corporation who will be providing the professional service in

this Commonwealth and whether such stockholder is licensed, or otherwise legally qualified, to perform the professional service in Virginia.

1978, c. 674; 2002, c. 77; 2003, c. 678.

§ 13.1-545. Repealed

Repealed by Acts 1988, c. 765, effective January 1, 1989.

§ 13.1-545.1. Merger with foreign professional corporation or foreign professional limited liability company

Any corporation organized under this chapter may merge with one or more foreign professional corporations that have obtained a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-544.2, or one or more foreign professional limited liability companies that have obtained a certificate of registration to transact business in the Commonwealth pursuant to § 13.1-1105, only if the professional corporations and the professional limited liability companies are organized to render the same professional service, provided that (i) the merger is permitted by the laws of the jurisdiction under which each such foreign professional corporation or foreign professional limited liability company is organized, (ii) if the surviving or new professional business entity is a professional corporation organized and operating under the laws of the Commonwealth, all of its shareholders shall be licensed or otherwise legally authorized to render the same professional service as the corporation, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its shares shall be held by individuals who are licensed or otherwise legally authorized within the Commonwealth to render the applicable service, and (iii) if the surviving or new professional business entity is a professional limited liability company organized and operating under the laws of the Commonwealth, all of its members and managers shall be licensed or otherwise legally authorized to render the same professional service as the professional limited liability company, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its membership interests shall be held by individuals or professional business entities that are licensed or otherwise legally authorized within the Commonwealth to render the applicable service.

1978, c. 674; 1987, c. 425; 1994, c. 349; 2008, c. 509.

§ 13.1-546. How corporation may render professional services; nonprofessional employees and officers; organizers and shareholders need not be employees, etc

No corporation organized and incorporated under this chapter may render professional services except through its officers, employees, independent contractors, and agents who are duly licensed or otherwise legally authorized to render such professional services, and only shareholders, officers, employees, independent contractors, and agents licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia; provided, however, this provision shall not be interpreted to preclude clerks, secretaries, bookkeepers, technicians and other

assistants who are not usually and ordinarily considered by custom and practice to be rendering professional service to the public for which a license or other legal authorization is required from acting as employees of a professional corporation and performing their usual duties or from acting as officers of a professional corporation; and provided further that nothing contained in this chapter shall be interpreted to require that the right of an individual to be a shareholder of a corporation organized under this chapter, or to organize such a corporation, is dependent upon the present or future existence of an employment relationship between him and such corporation, or his present or future active participation in any capacity in the production of the income of such corporation or in the performance of the services rendered by such corporations.

1970, c. 77; 1994, c. 349; 2003, c. 786.

§ 13.1-546.1. Professional law corporations may qualify as executor, administrator or in other fiduciary capacity

A professional corporation engaged in the practice of law, as a part of the practice of law, may act as an executor, trustee or administrator of an estate, or guardian for an infant, or in any other fiduciary capacity. Any officer, employee or agent of a professional corporation engaged in the practice of law who is duly licensed as an attorney in the Commonwealth may perform necessary fiduciary responsibilities on behalf of the corporation.

1989, c. 154 .

§ 13.1-547. Professional relationships not affected; liability for debts, etc., of corporation, its directors, officers and employees

The provisions of this chapter shall not be construed to alter or affect the professional relationship between a person furnishing professional services and a person receiving such service either with respect to liability arising out of such professional service or the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any, and all such confidential relationships enjoyed under the laws of this Commonwealth, whether now in existence, or hereafter enacted, shall remain inviolate. A director, officer, agent or employee of a professional corporation shall not, by reason of being any director, officer, agent or employee of such corporation, be personally liable for any debts or claims against, or the acts or omissions of the corporation or of another director, officer, agent or employee of the corporation, but the corporation shall be liable for the acts or omissions of its directors, officers, agents, employees and servants to the same extent to which any other corporation would be liable for the acts or omissions of its directors, officers, agents, employees and servants while they are engaged in carrying on the corporate business.

1970, c. 77; 1984, c. 448.

§ 13.1-548. Corporation not to engage in other business; investment of funds

No corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing

in this chapter or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, from owning real or personal property, or from exercising any other investment power granted to corporations under this title and not in conflict with the provisions of this chapter.

1970, c. 77; 1975, c. 543.

§ 13.1-549. Qualifications of shareholders; special provisions for corporations rendering services of architects, professional engineers, landscape architects and land surveyors, and using the title of certified interior designers

A. A corporation rendering the services of architects, professional engineers, land surveyors, or landscape architects, or using the title of certified interior designers, or any combination thereof, shall issue not less than two-thirds of its shares to individuals or professional business entities duly licensed to render the services of architect, professional engineer, land surveyor, or landscape architect, or to individuals legally authorized to use the title of certified interior designer, and the remainder of said shares may be issued only to and held by individuals who are employees of the corporation whether or not such employees are licensed to render professional services or authorized to use a title. For a corporation using the title of certified interior designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, not less than two-thirds of its shares shall be held by individuals or professional business entities who are duly licensed. No other professional corporation, except for a corporation engaged in the practice of accounting as described in § 13.1-549.1, may issue any of its shares to anyone other than an individual or professional business entity who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated, including trustees of an eligible employee stock ownership plan. Notwithstanding the above limitations, a professional corporation may (i) issue its shares to a partnership each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the corporation was incorporated or (ii) issue any of its shares to, and have as shareholders, directly or indirectly, whether through shares, fractional shares, or rights or options to purchase shares, the trustees of an eligible employee stock ownership plan.

B. As an additional prerequisite for a corporation engaging in the practice of the professions of architecture, professional engineering, land surveying, or landscape architecture, or using the title of certified interior designer, or any combination thereof, such corporation shall secure a certificate of authority, which may be renewable and may be either general or limited, from the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. Such certificate of authority shall be issued or renewed by the Board when in its discretion such corporation is in compliance with rules and regulations which shall be promulgated by the said Board consistent with its jurisdiction to provide adequate safeguards for the public's

health, welfare and safety. The fees for a certificate of authority as described above shall be the same fees as provided for in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1.

1970, c. 77; 1972, c. 655; 1980, c. 757; 1998, c. 27; 2000, cc. 191, 763; 2006, cc. 672, 715; 2008, c. 265; 2009, c. 309.

§ 13.1-549.1. Special provision for corporation engaged in practice of accounting

Before any professional corporation may engage in the practice of accounting in this Commonwealth it shall first obtain and maintain any registration required for such corporation by Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1. A corporation rendering the services of accounting shall issue not less than fifty-one percent of its shares to individuals or professional business entities duly licensed or otherwise legally authorized to render the services of accounting, including trustees of an eligible employee stock ownership plan, and the remainder of said shares may be issued only to and held by individuals who are employees of the corporation, whether or not such employees are licensed or otherwise authorized to render professional services.

1972, c. 180; 2000, c. 191; 2006, cc. 672, 715; 2008, c. 265.

§ 13.1-549.2. Registration certificate required for corporation engaged in practice of law

Before any professional corporation may engage in the practice of law in this Commonwealth, it shall first obtain and maintain a registration certificate required for such corporation by Chapter 39 of Title 54.1. Any such professional corporation which has been issued a certificate of incorporation before June 1, 1973, shall be issued a registration certificate upon the payment of the required fee and upon compliance with § 54.1-3902 on or before January 1, 1974.

1973, c. 484.

§ 13.1-549.3. Repealed

Repealed by Acts 1994, c. 349.

§ 13.1-550. Transfer of shares

A. No shareholder of a corporation organized under this chapter may sell or transfer his shares in such corporation except to (i) the corporation, (ii) another individual or professional business entity who is eligible to be a shareholder of such corporation, (iii) a qualified charitable remainder trust as defined in subsection B, or (iv) the trustees of an eligible employee stock ownership plan. In the case of a corporation rendering the services of architects, professional engineers, land surveyors and certified landscape architects, or any combination thereof, no person who is not duly licensed or otherwise legally authorized to render one such service shall be eligible unless at least two-thirds of the remaining shares after the sale or transfer shall be held by individuals or professional business entities duly licensed or otherwise legally authorized to perform one such service.

B. As used in this section, "qualified charitable remainder trust" means a trust meeting the requirements of § 664 of the United States Internal Revenue Code of 1986, as amended, and which meets all of the following conditions:

1. Has one or more current income beneficiaries, all of which are eligible to be a shareholder in the corporation under § 13.1-544.

2. Has a trustee or independent special trustee who:

a. Is eligible to be a shareholder in the corporation under § 13.1-544; and

b. Has exclusive authority over the shares of the corporation while the shares are held in the trust.

3. Has one or more irrevocably designated charitable remaindermen, all of which must at all times be domiciled or maintain a local chapter in the Commonwealth of Virginia.

4. When transferring any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in § 170(c) of the Internal Revenue Code that are domiciled or maintain a local chapter in this Commonwealth.

1970, c. 77; 1980, c. 757; 1999, c. 100; 2006, cc. 672, 715; 2008, c. 265.

§ 13.1-551. Disqualification of shareholder

If any officer, shareholder, agent or employee of a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this Commonwealth, he shall immediately sever all employment with, and financial interests in such corporation except that he may be a shareholder subject to the provisions of this chapter. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and the termination of its corporate existence by the State Corporation Commission.

1970, c. 77; 2002, c. 77.

§ 13.1-552. Conversion into nonprofessional corporation; disposition of shares of deceased or disqualified shareholders

A. A corporation under this chapter shall have perpetual existence until its corporate existence is terminated in accordance with other provisions of this title.

B. Whenever all shareholders of a corporation licensed under this chapter cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which the corporation was organized, or by the vote of the holders of at least two-thirds of its outstanding capital stock, the corporation thereupon shall be treated as converted into, and shall operate henceforth solely as, a corporation under applicable provisions of this title, exclusive of this chapter, but may be reconverted upon removal of the disability or by the vote of the holders of at least two-thirds of its outstanding capital stock.

C. Within one year following the date of death of a shareholder, or his disqualification as hereinbefore provided, all of the shares of such shareholders shall be transferred to, and acquired by, the corporation or persons qualified to own the shares, if the provisions of subsection B are inapplicable. If no other provision to accomplish this transfer and acquisition is in effect and carried out within this period, the corporation thereafter shall purchase and redeem all of the decedent

shareholder's shares of stock at book value, determined as of the end of the month immediately preceding death or disqualification. The book value shall be determined from the books and records of the corporation in accordance with the generally accepted accounting principles on the accrual method of accounting. No subsequent adjustment of this book value, whether by the corporation itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the redemption price. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the corporate articles, bylaws, or by contract to transfer the shares of a (i) deceased or disqualified shareholder or (ii) disqualified charitable remainder trust to the corporation or to persons qualified to own the shares, whether made before or after (i) the death or disqualification of the shareholder or (ii) the disqualification of a charitable remainder trust, provided that within the one-year period herein specified all the stock involved shall have been so transferred.

1970, c. 77; 1999, c. 100; 2002, c. 77.

§ 13.1-553. Board of directors

A. Except as provided in an agreement adopted pursuant to § 13.1-671.1 or 13.1-852.1 that is not in conflict with § 13.1-544, a professional corporation organized pursuant to the provisions of this chapter shall be governed by a board of directors, which shall have the full management of the business and affairs of the corporation and continuing exclusive authority to make management decisions on its behalf, including the power and authority to delegate to its agents, officers, and employees, and to delegate by a management agreement or another agreement with, or otherwise to, other persons managerial duties and tasks related to the corporation's operations, and no shareholder or member shall have the power to bind the corporation within the scope of its business or profession merely by virtue of his being a shareholder or member. To the extent the board of directors is eliminated or its make-up or manner of selection is modified by an agreement adopted pursuant to § 13.1-671.1 or 13.1-852.1, only individuals or entities licensed or otherwise legally authorized to render the same professional services within the Commonwealth as the services provided by the professional corporation or its shareholders or members shall supervise and direct the provision of professional services of that professional corporation or its shareholders or members within the Commonwealth; however, in the case of a corporation rendering the services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers, or any combination thereof, such supervision and direction may be provided by individuals who are employees of the corporation and are not duly licensed to render such professional services so long as at least two-thirds of the individuals providing such supervision and direction are employees of the corporation and duly licensed to render such professional services.

B. The articles of incorporation may prescribe the manner in which the board of directors shall be chosen and the number thereof. No individual not duly licensed or otherwise duly authorized to render the professional services of the corporation shall be a member of the board of directors, except that the board of directors of a corporation rendering the services of architects, professional

engineers, land surveyors, landscape architects, or certified interior designers, or any combination thereof, may have as members employees of the corporation who are not authorized to render the professional services of the corporation, provided that such employee-directors do not constitute more than one-third of all of the members of the board of directors.

C. The board of directors, including the first board of directors, shall consist of one or more individuals. The number of directors shall be fixed by the bylaws except as to the number of the first board of directors, which shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment of the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

1970, c. 77; 1978, c. 828; 1982, c. 590; 1995, c. 322; 2006, c. 649; 2007, c. 629; 2009, c. 309; 2010, c. 532.

§ 13.1-554. Repealed

Repealed by Acts 2002, ch. 346 .

§ 13.1-554.1. Income and property taxes

All professional corporations organized or qualifying under the provisions of this chapter, shall be taxed as corporations for income tax purposes and shall be subject to the provisions of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1, entitled "Income Taxes," insofar as these provisions are applicable to corporations, and property owned by such corporations shall be taxed in the actual form in which it may exist and not as capital. The provisions of this section shall be effective January 1, 1971.

1972, c. 214.

§ 13.1-555. Merger

A professional corporation operating pursuant to the terms of this chapter may merge with one or more corporations, limited liability companies, or domestic partnerships only if the surviving corporation, limited liability company, or domestic partnership is a professional corporation, a professional limited liability company, or a domestic partnership all of the partners of which are professional corporations, professional limited liability companies, or individuals duly licensed or otherwise legally authorized to render the same professional services as those for which the surviving professional corporation, professional limited liability company, or domestic partnership was incorporated or organized.

1970, c. 77; 2008, c. 509.

§ 13.1-556. Application of Chapter 9 or Chapter 10 of this title

The provisions of Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.), as the case may be, of this title shall be applicable to professional corporations organized under the provisions of

this chapter. Where a conflict arises between the provisions found in Chapter 9, or Chapter 10, as the case may be, and this chapter, this chapter shall control.

1970, c. 77; 1972, c. 84; 2000, c. 194.

Chapter 8 - RETAIL FRANCHISING ACT

§ 13.1-557. Short title

This chapter shall be known as the "Retail Franchising Act."

1972, c. 561.

§ 13.1-558. Policy of the Commonwealth

It is hereby declared to be the policy of the Commonwealth, through the exercise by the General Assembly of its power to regulate commerce partly or wholly within the Commonwealth of Virginia, to correct as rapidly as practicable such inequities as may exist in the franchise system so as to establish a more even balance of power between franchisors and franchisees; to require franchisors to deal fairly with their franchisees with reference to all aspects of the franchise relationship and to provide franchisees more direct, simple, and complete judicial relief against franchisors who fail to deal in a lawful manner with them.

1972, c. 561.

§ 13.1-559. Definitions; applicability of chapter

A. As used in this chapter, unless the context otherwise requires:

"Commission" means the State Corporation Commission.

"Controlling person" means a natural person who is an officer, director, or partner, or who occupies a similar status or performs a similar function, of a franchisor organized as a corporation, partnership, or other entity, or any person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a franchisor, whether through the ownership of voting securities, by contract, or otherwise.

"Franchise" means a written contract or agreement between two or more persons, by which:

1. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in substantial part by a franchisor;

2. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

3. The franchisee is required to pay, directly or indirectly, a franchise fee of $500 or more.

"Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not

including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of goods for resale or (ii) the payment at fair market value for the purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or maintain the business.

"Franchisee" means a person to whom a franchise is granted or sold.

"Franchisor" means a person, including a subfranchisor, who grants or sells, or offers to grant or sell, a franchise.

"Offer" or "offer to sell" includes every attempt to offer to dispose of or grant, and every solicitation of an offer to buy, a franchise or an interest in a franchise for value.

"Place of business" means a building or portion thereof from which the goods or services authorized by the franchise are sold or offered for sale in person by the franchisee or employees or agents of the franchisee, or a truck or van used in the sale of such goods which is of a type designated by the franchisor and is equipped and marked in conformance with requirements of the franchisor.

"Preopening obligations" means the franchisor's obligations to provide to the franchisee, prior to the opening of the franchisee's business, real estate, improvements, equipment, inventory, training, or other items to be included in the offering.

"Sale" or "sell" includes every contract or agreement of sale or grant of, contract to sell, or disposition of a franchise or interest in a franchise for value.

"Subfranchisor" means a person who is authorized by a franchisor to grant a franchise within a particular geographic region.

B. This chapter shall apply only to a franchise the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the Commonwealth of Virginia.

A franchise does not include a contract or agreement by which a retailer of goods or services is granted the right either (i) to utilize a marketing plan or system to promote the sale or distribution of goods or services which are incidental and ancillary to the principal business of the retailer (sales under such a plan or system accounting for less than 20 percent of the retailer's gross sales being deemed incidental and ancillary); or (ii) to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof provided such retailer is not required to purchase such goods or services from the operator of such establishment.

1972, c. 561; 1978, c. 670; 1990, c. 420; 1991, c. 475; 2007, c. 668; 2009, c. 148.

§ 13.1-560. Registration required

It shall be unlawful for any person to sell or offer to sell a franchise in this Commonwealth unless the franchise is registered under the provisions of this chapter or exempted from registration by rule or order of the Commission.

1972, c. 561; 1978, c. 670; 2007, c. 668; 2009, c. 148.

§ 13.1-561. Procedure for registration; bond; renewal; fee

A. A franchise may be registered after filing with the Commission an application containing such relevant information as the Commission may require. The franchise shall be registered if the Commission finds that the franchisor, including any controlling person of the franchisor, is a person of good character and reputation and that all information required of the applicant by the Commission has been supplied, that none of the grounds for revocation enumerated in § 13.1-562 are applicable to the franchise, and that the required fee has been paid.

B. The Commission may require, as a condition of registration or renewal of registration: (i) the escrow or deferral of franchise fees and other funds paid by the franchisee to the franchisor until the franchisor's preopening obligations are fulfilled, if the grounds enumerated in clause (i) of subdivision A 2 of § 13.1-562 exist, or (ii) the filing by a franchisor of a surety bond conditioned upon the payment of all criminal and civil penalties provided in this chapter in an amount determined by the Commission to be adequate to protect the public and all franchisees of the franchisor, taking into proper account the marketing plan or system to be franchised, the goods or services to be offered, whether or not the franchisor has a regular place of business in this Commonwealth, and any other facts indicating the necessary amount of the bond.

C. The Commission shall by rule or order prescribe the procedures for filing an application for exemption, amendments to the exemption, and when an exemption or renewal becomes effective.

D. All registrations, exemptions and renewals thereof shall expire at midnight on the annual date of their effectiveness. However, the Commission may extend such expiration of an exemption as much as 45 days.

E. Each application for the registration or exemption of a franchise shall be accompanied by a fee of $500, payable to the Treasurer of Virginia. Each application for the renewal of a franchise registration or exemption, including any amendments to the registration or exemption application which accompany or are part of the application for renewal, shall be accompanied by a fee of $250 payable to the Treasurer of Virginia. Unless submitted in connection with an application for renewal, each amendment or group of amendments to a registration or exemption application submitted after the application has been granted shall be accompanied by a fee of $100, payable to the Treasurer of Virginia. If the application for registration, exemption or renewal is withdrawn or is not granted, or if the registration or exemption application is not amended, the fee shall not be returnable.

F. For the purposes of registration, exemption or renewal of registration of a franchise, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, and if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with § 50-74.

1972, c. 561; 1978, c. 670; 1991, c. 475; 1992, c. 158; 2007, c. 668.

§ 13.1-561.1. Fees to cover expense of regulation

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapters 5 (§ 13.1-501 et seq.) and 6 (§ 13.1-528 et seq.) of this title, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

§ 13.1-562. Revocation of or refusal to renew registration

A. The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the effectiveness of a franchise registration (or refuse to renew a registration if an application for renewal has been or is to be filed) if it finds that such an order is in the public interest or that the franchisor or any controlling person of the franchisor:

1. Has engaged in any fraudulent transaction;

2. Is insolvent, or in danger of becoming insolvent, either (i) in the sense that his liabilities exceed his assets or (ii) in the sense that he cannot meet his obligations as they mature;

3. Is a person for whom a conservator or guardian has been appointed and is acting;

4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a franchise, or any felony;

5. Has failed to furnish information requested by the Commission concerning the conduct of his business; or

6. Has violated any of the provisions of this chapter.

B. If it appears to the Commission that it is in the public interest and that there exists one or more of the grounds enumerated in subdivisions (1) through (6) of subsection A of this section, the Commission may so notify the franchisor. The franchisor shall have seven business days from the date of the written notice from the Commission within which to file a written response to the matters addressed in the notice. If (i) the Commission notified, or reasonably attempted to notify, the franchisor in writing, (ii) it appears to be in the public interest, and (iii) either the Commission, after consideration of the franchisor's response, reasonably believes the ground or grounds exist or a response is not filed in a timely manner, the Commission may summarily enter an order suspending the effectiveness of the franchisor's registration pending final determination of any proceeding under this section. The Commission shall promptly send a copy of the suspension order to the franchisor and each of its subfranchisors, if any are known to the Commission. At a minimum, the order shall set forth the basis for the suspension as well as the

franchisor's or subfranchisor's right to file a written request for a hearing within twenty-one days after the date of entry of the order. If a hearing is requested in a timely manner, the Commission, after notice and an opportunity for a hearing as soon as practicable, may modify or vacate the suspension order or continue it in effect until final determination of the proceeding under this section. If a hearing is not requested in a timely manner, the suspension order shall remain in effect until it is modified or vacated by the Commission.

1972, c. 561; 1978, c. 670; 1991, c. 475; 1997, c. 921; 2007, c. 668.

§ 13.1-563. Unlawful offers

It shall be unlawful for any person, in connection with the sale or offer to sell a franchise in this Commonwealth, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to avoid misleading the offeree;

3. To engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon the franchisee; or

4. To fail to provide the franchisee a copy of (i) the franchise agreement and (ii) such disclosure document as may be required by rule or order of the Commission.

1972, c. 561; 1978, c. 670; 1991, c. 475; 2009, c. 148.

§ 13.1-564. Unlawful cancellation of franchise; undue influence

It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right given to him by any provision contained in the franchise.

1972, c. 561.

§ 13.1-565. Voidable franchises

Any franchise may be declared void by the franchisee at his option by sending a written declaration of that fact and the reasons therefor to the franchisor by registered or certified mail if:

1. The franchisor's offer to sell a franchise was unlawful, as provided in § 13.1-560 or § 13.1-563, provided that the franchisee send such written declaration within 72 hours after discovery thereof but not more than 90 days after execution of the franchise;

2. The franchisee was not afforded the opportunity to negotiate with the franchisor on all provisions within the franchise, except that such negotiations shall not result in the impairment of the uniform image and quality standards of the franchise, provided that the franchisee send such written declaration within 30 days after execution of the franchise; or

3. The franchisee was not furnished a copy of the franchise agreement and disclosure documents at least 72 hours prior to execution of the franchise, provided that the franchisee send such written declaration within 30 days after execution of the franchise.

1972, c. 561; 1978, c. 670; 1979, c. 104; 1991, c. 475; 2009, c. 148.

§ 13.1-566. Service of process on nonresident franchisor

Every nonresident franchisor who has a franchise registered hereunder and which is not a corporation complying with § 13.1-759 or § 13.1-767 shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand. Every nonresident franchisor who sells or offers to sell a franchise registered hereunder and every nonresident franchisor whose franchise is sold or offered to be sold in this Commonwealth shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter arising under this chapter any process, notice, order or demand. Service may be made on the clerk in accordance with § 12.1-19.1.

1972, c. 561; 1978, c. 670; 1990, c. 263; 1991, c. 672; 2009, c. 148.

§ 13.1-567. Investigations; confidentiality of information and documents

The Commission may make such investigations within or outside of this Commonwealth as it deems necessary to determine whether any person has violated the provisions of this chapter or any order or injunction of the Commission, and any franchisor found guilty of such a violation may be required to pay the actual costs of the investigation including the time of the investigator. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim to the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

Information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public; provided, however, that nothing contained herein shall be interpreted to prohibit or limit (i) the publication of the findings, decisions, orders, judgments or opinions of the Commission; (ii) the use of any such information or documents in proceedings by or before the Commission or a hearing examiner appointed by the Commission; (iii) the disclosure of any such information or documents to any quasi-governmental entity substantially associated with the retail franchising business approved by rule of the Commission; or, (iv) the disclosure of any such information or documents to any governmental entity approved by rule of the Commission, or to any attorney for the Commonwealth, or to the Attorney General of Virginia.

1972, c. 561; 1979, c. 379.

§ 13.1-568. Injunctions

The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue temporary and permanent injunctions against violations or attempted violations of this chapter or any order issued pursuant to this chapter. For the violation of any injunction or order issued under this chapter it shall have the same power to punish for contempt as a court of equity.

1972, c. 561; 1992, c. 468 .

§ 13.1-569. Crimes

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter with the intent to defraud any franchisee or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a misdemeanor, and on conviction, be punished by a fine of not less than $100 nor more than $5,000, or by confinement in jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

1972, c. 561; 1978, c. 670.

§ 13.1-569.1. Commission may transmit record or complaint to locality where violation occurred

The Commission may transmit the record of any proceeding or complaint involving any violation of this chapter to the attorney for the Commonwealth in the county or city wherein the violation occurred.

1978, c. 670.

§ 13.1-570. Violations punishable by Commission

The Commission may, by judgment entered after a hearing on thirty days' notice to the defendant, if it be proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter, impose a civil penalty not exceeding $25,000, which shall be collectible by the process of the Commission as provided by law.

Each franchise entered into contrary to the provisions of this chapter shall constitute a separate violation. The Commission may request the franchisor to rescind any franchise and to make restitution to the franchisee. If the franchisor complies with the request, the Commission shall consider such compliance in determining whether a penalty should be imposed on him on account of that illegal franchise, and if so, the amount of such penalty.

1972, c. 561; 1990, c. 31; 1991, c. 475; 2000, c. 166.

§ 13.1-571. Civil remedies

(a) Any franchisee who has declared the franchise void under § 13.1-565 or who has suffered damages by reason of any violation of § 13.1-564 may bring an action against its franchisor to recover the damages sustained by reason thereof. Such franchisee, if successful, shall also be entitled to the costs of the action, including reasonable attorney's fees.

(b) No suit shall be maintained to enforce any liability created under this section unless brought within four years after the cause of action upon which it is based arose.

(c) Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void; provided, however, that nothing contained herein shall bar the right of a franchisor and franchisee to agree to binding arbitration of disputes consistent with the provisions of this chapter.

(d) The rights and remedies provided by this section shall be in addition to any and all other rights and remedies that may exist at law or in equity.

1972, c. 561.

§ 13.1-572. Rules and forms

A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including, but not limited to rules and forms governing disclosure documents, applications and reports, escrow and deferral of franchise fees and other funds paid by the franchisee, and defining accounting, technical and trade terms used in this chapter not inconsistent with the provisions of this chapter. The Commission shall have the authority, for the purpose of this chapter to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify franchises, persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such rules and forms shall be printed or mimeographed and available for distribution at the office of the Commission.

1972, c. 561; 1978, c. 670; 2007, c. 668.

§ 13.1-573. Certain records of Commission available to public; admissibility of copies; destruction

The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission. However, papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

1972, c. 561.

§ 13.1-574. Effective date

The provisions of this chapter shall apply to grants and offers to grant franchises on and after July 1, 1972.

1972, c. 561.

Chapter 9 - VIRGINIA STOCK CORPORATION ACT

Article 1 - GENERAL PROVISIONS

§ 13.1-601. Short title

This chapter shall be known as the Virginia Stock Corporation Act.

Code 1950, § 13.1-1; 1956, c. 428; 1985, c. 522.

§ 13.1-602. Reservation of power to amend or repeal

The General Assembly shall have power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act shall be governed by the amendment or repeal.

Code 1950, § 13.1-129; 1956, c. 428; 1985, c. 522.

§ 13.1-603. Definitions

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of consolidation, serial designation, reduction, correction, and merger. It excludes articles of share exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of restatement, amendment, domestication, or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate, " when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting colors, or capitals, or is underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or that has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) of this chapter or Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 13.1-610, electronic transmission.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other

shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

"Domestic business trust" has the same meaning as specified in § 13.1-1201.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-803.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Effective date of notice" is defined in § 13.1-610.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-610.

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-610.

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock corporation.

"Eligible interests" means interests or memberships.

"Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation; any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and any foreign government.

"Foreign business trust" has the same meaning as specified in § 13.1-1201.

"Foreign corporation" means a corporation authorized by law to issue shares, organized under laws other than the laws of the Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-803.

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

"Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the Commonwealth.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of an unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

"Membership" means the rights of a member in a domestic or foreign nonstock corporation or limited liability company.

"Notice" is defined in § 13.1-610.

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a governmental agency.

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"Shares" means the units into which the proprietary interests in a corporation are divided.

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

"State" when referring to a part of the United States, includes a state, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership or business trust.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

Code 1950, § 13.1-2; 1956, c. 428; 1962, c. 44; 1975, c. 500; 1985, c. 522; 1992, cc. 575, 802; 1993, c. 200; 1994, c. 122; 1997, cc. 190, 801; 2001, c. 545; 2002, cc. 1, 285; 2003, cc. 340, 728; 2005, c. 765; 2006, c. 663; 2007, c. 165; 2010, c. 782; 2012, c. 706; 2015, c. 611; 2016, c. 288.

§ 13.1-604. Filing requirements

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § 13.1-775 shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person signing the document shall state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any franchise tax, charter or entrance fee or registration fee required by this chapter.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

L. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts can be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11 (§ 13.1-705 et seq.) or 12 (§ 13.1-715.1 et seq.) of this chapter; and

b. "Plan" means a plan of merger or share exchange.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. The registered office of any entity required in a filed document;

c. The registered agent of any entity required in a filed document;

d. The number of authorized shares and designation of each class or series of shares;

e. The effective date of a filed document; and

f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document, and that fact is not objectively ascertainable by reference to a source described in subdivision 2 a of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

1985, c. 522; 1986, c. 231; 1995, c. 70; 2000, c. 995; 2005, c. 765; 2010, c. 782; 2015, c. 623.

§ 13.1-604.1. Filings with the Commission pursuant to reorganization

A. Notwithstanding anything to the contrary contained in § 13.1-604, 13.1-619, 13.1-710, 13.1-711, 13.1-720, 13.1-722.12, 13.1-743, or 13.1-750, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may put into effect and carry out the plan and decrees of the court relative thereto, (i) through one or more amendments to the corporation's articles of incorporation containing terms and conditions permitted by this chapter; (ii) through a plan of merger, share exchange, or entity conversion; or (iii) through dissolution or termination, without action by the board of directors or shareholders to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, share exchange, entity conversion, dissolution, or termination, which, in

addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;

2. Any provision relating to the amendment or amendments; plan of merger, share exchange, or entity conversion; or dissolution or termination approved by the court;

3. The name of the court and the date of the court's order or decree approving the amendment, plan of merger, share exchange, or entity conversion; or dissolution or termination;

4. The title and case number, if any, of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, merger, share exchange, entity conversion, dissolution, or termination comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, share exchange, entity conversion, dissolution, or termination.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

1988, c. 194; 2005, c. 765; 2012, c. 130.

§ 13.1-605. Issuance of certificate by Commission; recordation of documents

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the requirements of law and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

Code 1950, § 13.1-126; 1956, c. 428; 1982, c. 375; 1984, c. 295; 1985, c. 522; 1986, c. 231; 1987, c. 183; 1988, c. 405; 1989, c. 152 .

§ 13.1-606. Effective time and date of document

A. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the

certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding subsection A of this section, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A of this section, for purposes of §§ 13.1-630 and 13.1-762, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

1985, c. 522.

§ 13.1-607. Correcting filed articles

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized or defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;

3. Each inaccurate or defective matter that is to be corrected;

4. The correction of each inaccurate or defective matter; and

5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than 30 days after the effective date of the certificate relating to the articles to be corrected.

1985, c. 522; 2005, c. 765; 2007, c. 165; 2008, cc. 91, 509.

§ 13.1-608. Evidentiary effect of copy of filed document

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk of the Commission or a member of the staff of the office of the clerk, which in either case may be in facsimile, and the seal of the Commission, which may be in

facsimile, is conclusive evidence that the document has been admitted to the records of the Commission.

1985, c. 522; 2005, c. 765.

§ 13.1-609. Certificate of good standing

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of this Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or that (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in this Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this chapter have been paid;

2. An annual report required by § 13.1-775 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

1985, c. 522; 1988, c. 405; 1993, c. 60; 2005, c. 765; 2006, c. 663.

§ 13.1-610. Notices and other communications

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery, except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television, or other form of public communication in the area where the notice is intended to be given.

C. Notice or other communication to a domestic or foreign corporation authorized to transact business in the Commonwealth may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.

E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:

a. A shareholder's address shown on the corporation's record of shareholders maintained by the corporation pursuant to subsection C of § 13.1-770;

b. A director's residence or usual place of business;

c. The corporation's principal place of business; or

d. The corporation's registered office when left with the corporation's registered agent;

2. If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

3. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or: (i) if sent by registered or certified mail return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;

4. If an electronic transmission, when it is received as provided in subsection F; and

5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

L. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation, or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

1985, c. 522; 2002, c. 285; 2003, c. 728; 2005, c. 765; 2007, c. 165; 2010, c. 782.

§ 13.1-610.1. Householding

A. A corporation shall be deemed to have delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to all shareholders who share a common address as shown on the corporation's current record of shareholders if:

1. The corporation delivers one copy of the notice, report or statement to the common address;

2. The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

3. Each of those shareholders consents, including any implied consent pursuant to subsection B, to delivery of a single copy of such notice, report or statement to the shareholders' common address.

B. Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection A, shall be deemed to have consented to receiving such single copy at the common address.

C. Any consent pursuant to this section shall be revocable by any shareholder who delivers written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

2007, c. 165.

§ 13.1-611. Number of shareholders

A. For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

1. Two or more co-owners;

2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or

3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

1985, c. 522; 2005, c. 765.

§ 13.1-612. Penalty for signing false documents

A. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-134; 1958, c. 564; 1975, c. 500; 1985, c. 522.

§ 13.1-613. Unlawful to transact or offer to transact business as a corporation unless authorized

It shall be unlawful for any person to transact business in this Commonwealth as a corporation or to offer or advertise to transact business in this Commonwealth as a corporation unless the alleged corporation is either a domestic corporation or a foreign corporation authorized to transact business in this Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-135; 1958, c. 565; 1981, c. 320; 1985, c. 522.

§ 13.1-614. Hearing and finality of Commission action; injunctions

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and the corporation within 30 days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing or consummating any amendment, merger, share exchange, domestication, conversion or termination of corporate existence or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § 13.1-661 or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or of its own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

Code 1950, § 13.1-125; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2008, c. 91; 2010, c. 782; 2015, c. 623.

Article 2 - FEES

§ 13.1-615. Fees to be collected by Commission; application of payment; payment of fees prerequisite to Commission action; exceptions

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the annual report required by § 13.1-775, a statement of change pursuant to § 13.1-635 or 13.1-764, and a statement of resignation pursuant to § 13.1-636 or 13.1-765, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § 13.1-775.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;

2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. A foreign corporation that has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual registration fee assessment date

pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after its annual registration fee assessment date pursuant to subsection B of § 13.1-775.1 shall have its annual registration fee reassessed to reflect the new number of authorized shares.

E. Annual registration fee assessments that have been paid shall not be refunded.

Code 1950, § 13.1-122; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1991, c. 309; 1997, c. 216; 2001, c. 545; 2002, c. 1; 2005, c. 765; 2006, c. 659; 2007, c. 810; 2009, c. 216; 2010, c. 753; 2015, c. 623.

§ 13.1-615.1. Charter and entrance fees for corporations

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to transact business in the Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares -- $50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares -- $2,500.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation.

C. For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.

D. Whenever by articles of amendment or articles of merger, the number of authorized shares of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by such corporation and the amount that would be required by this section to be paid if the increased number of authorized shares were being stated at that time in the original articles of incorporation.

E. For any domestic limited liability company that files articles of entity conversion to become a domestic corporation and that had previously converted from a domestic corporation, the charter

fee to be charged upon entity conversion shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by the domestic limited liability company when it was a domestic corporation.

F. If no charter or entrance fee has been heretofore paid to the Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

1988, c. 405; 2001, c. 545; 2002, c. 1; 2007, c. 810; 2008, c. 509; 2015, c. 623.

§ 13.1-616. Fees for filing documents or issuing certificates

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing any one of the following, the fee shall be $25:

a. Articles of incorporation, domestication, or incorporation surrender.

b. Articles of entity conversion to convert a domestic limited liability company to a corporation.

c. Articles of amendment or restatement.

d. Articles of merger or share exchange.

e. Articles of correction.

f. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

g. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

h. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

i. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

j. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be $10:

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for a certificate of withdrawal of a foreign corporation.

3. For issuing a certificate pursuant to § 13.1-781, the fee shall be $6.

Code 1950, §§ 13-18, 13.1-123, 13.1-124.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1988, c. 405; 1995, c. 368; 2001, c. 545; 2002, c. 1; 2004, c. 274; 2005, c. 765; 2007, cc. 771, 810; 2012, c. 130.

§ 13.1-617. Repealed

Repealed by Acts 2001, c. 545, effective February 1, 2002.

Article 3 - FORMATION OF CORPORATIONS

§ 13.1-618. Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by signing and delivering articles of incorporation to the Commission for filing.

Code 1950, § 13.1-48; 1956, c. 428; 1968, c. 42; 1972, c. 606; 1985, c. 522; 2015, c. 623.

§ 13.1-619. Articles of incorporation

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § 13.1-630;

2. The number of shares the corporation is authorized to issue;

3. If more than one class or series of shares is authorized, the number of authorized shares of each class or series and a distinguishing designation for each class or series; and

4. The address of the corporation's initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;

2. Any provision defining or denying the preemptive right of shareholders to acquire unissued shares of the corporation;

3. Provisions not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized;

b. Regarding the management of the business and regulation of the affairs of the corporation;

c. Defining, limiting, and regulating the powers of the corporation, its directors, and shareholders;

d. Establishing a par value for authorized shares or classes or series of shares; and

4. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-604.

Code 1950, § 13.1-49; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541; 2005, c. 765.

§ 13.1-620. Special kinds of business

A. If any corporation is to conduct the business of a bank or trust company, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the banking or trust company business.

B. If any corporation is to conduct the business of an insurance company, that shall be stated in the articles of incorporation and the articles shall further set forth the class or classes of insurance the corporation proposes to undertake and the corporation shall not have power to conduct other business except as may be related to or incidental to the insurance business.

C. If any corporation is to conduct the business of a savings and loan association or savings bank, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the stated business.

D. If any corporation is to conduct the business of a railroad or other public service company, that shall be stated in the articles of incorporation and a brief description of the business shall be included. Otherwise the corporation shall not have the power to conduct a public service business or to exercise any of the privileges of a public service company. No corporation shall be organized under this chapter for the purpose of conducting in this Commonwealth more than one kind of public service business except that the telephone and telegraph businesses or the water and sewer businesses may be combined, but this provision shall not limit the powers of domestic corporations existing on January 1, 1986. No corporation organized under this chapter to conduct the business of a public service company shall have general business powers in this Commonwealth. Corporations organized under this chapter to conduct the business of a public service company may, however, conduct in this Commonwealth other public service business or nonpublic service business so far as may be related to or incidental to its stated business as a public service company and in any other state such business as may be authorized or permitted by the laws thereof. Nothing in this subsection shall limit the powers of such corporation in respect of the securities of other corporations or of limited liability companies.

E. If one or more of the purposes set forth in the articles of incorporation is to own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for

the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, power or water, including heated or chilled water, or sewerage facilities, either directly or indirectly, to or for the public, the Commission shall not issue a certificate of incorporation unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

F. Whether or not classified elsewhere in the Code as public service companies the following are not required to incorporate as public service companies: a person authorized by the Federal Communications Commission to provide commercial mobile service, household goods carriers, petroleum tank truck carriers, bottled gas companies, taxicab companies, community television companies, charter party carriers, restricted parcel carriers, sight-seeing carriers, companies excluded from the definition of "public utility" by § 56-265.1(b)(4) or by § 56-1.2 and compressed natural gas filling stations.

G. A water or sewer company that proposes to serve more than fifty customers shall incorporate as a public service company. A water or sewer company shall not serve more than fifty customers unless its articles of incorporation state that the corporation is to conduct business as a public service company. The two preceding sentences shall not apply to a water or sewer company incorporated before and operating a water or sewer system on January 1, 1970; however, as to any water or sewer system serving more than fifty customers, upon application to the Commission by a majority of the customers or by the company, a hearing may be held after thirty days' notice to the company and the system's customers or a majority thereof, and the Commission may order such, if any, improvements or rate changes or both as are just and reasonable. Upon ordering into effect any rate changes or improvements found to be just and reasonable, the water or sewer system shall remain subject to the Commission's regulatory authority in the same manner as a public utility for such reasonable period as the Commission may direct. Nothing in this subsection shall apply to persons described in § 56-1.2.

Code 1950, § 13.1-50; 1956, c. 428; 1968, c. 110; 1970, c. 127; 1972, c. 123; 1974, c. 285; 1976, c. 284; 1981, c. 285; 1985, c. 522; 1990, c. 488; 1991, c. 263; 1993, cc. 61, 265, 419; 1995, c. 281; 1996, c. 16.

§ 13.1-621. Issuance of certificate of incorporation

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation. When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter.

Code 1950, §§ 13-25, 13-26, 13.1-51, 13.1-52; 1956, c. 428; 1985, c. 522.

§ 13.1-622. Liability for preincorporation transactions

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

1985, c. 522.

§ 13.1-623. Organization of corporation

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of this Commonwealth.

Code 1950, § 13.1-54; 1956, c. 428; 1972, c. 606; 1974, c. 71; 1975, c. 500; 1985, c. 522.

§ 13.1-624. Bylaws

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

C. The bylaws may contain one or more of the following provisions:

1. A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors;

2. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption; and

3. A requirement that a circuit court or a federal district court in the Commonwealth or the jurisdiction in which the corporation has its principal office shall be the sole and exclusive forum for (i) any derivative action brought on behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's shareholders by any current or former officer or director of the corporation; or (iii) any action against the corporation or any current or former officer or director of the corporation arising pursuant to this chapter or the corporation's articles of incorporation or bylaws.

D. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or adopting a bylaw described in subsection C may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Code 1950, §§ 13-10, 13.1-24; 1956, c. 428; 1985, c. 522; 2010, c. 782; 2015, c. 611.

§ 13.1-625. Emergency bylaws

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;

2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and

2. May not be used to impose liability on a corporate director, officer, employee, or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

Code 1950, § 13.1-24.1; 1962, c. 102; 1975, c. 500; 1985, c. 522.

Article 4 - PURPOSES AND POWERS

§ 13.1-626. Purposes

Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is (i) set forth in the articles of incorporation, or (ii) required to be set forth in the articles of incorporation by § 13.1-620, or any other law of this Commonwealth.

1985, c. 522.

§ 13.1-627. General powers

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its corporate name;

2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;

4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

9. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;

10. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

12. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes, except that corporations subject to regulation as to rates by the Commission shall not have power to make donations in excess of five percent of net income computed before federal and state taxes on income and without taking into account any deduction for gifts;

13. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the corporation;

14. To pay compensation, or to pay additional compensation, to any or all directors, officers and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to continue such insurance after the relationship terminates;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a public service company, a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on public service companies, banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company. The term "public service company" as used in this subsection shall not apply to railroads, which shall have the power given other corporations generally by this subsection. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures or other associations are activities that the public service company could lawfully engage in without participation in a partnership, joint venture or association and will require an equity investment by the public service company and debt with recourse to the public service company of an amount not more than one percent of its net equity as measured at the end of the most recent fiscal year so long as all such partnerships, joint ventures and associations collectively will require an equity investment by the public service company and debt with recourse to the public service company of less than five percent of the net equity of the public service company as measured at the end of the most recent fiscal year. Upon application by the public service company, the Commission may approve any partnership agreements, joint ventures or other associations that exceed the equity investment criteria set forth above. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations between telephone companies and telephone companies, whether in corporate or other form, or between telephone companies and commonly owned affiliates of telephone companies for the purpose of providing domestic cellular radio telecommunication service.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings and loan associations, credit unions, industrial loan associations or other

special types of corporations, shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

Code 1950, § 13.1-2.1; 1975, c. 500; 1977, c. 508; 1983, c. 534; 1984, c. 406; 1985, c. 522; 1993, cc. 61, 143, 419; 1994, c. 452; 1996, cc. 16, 257; 2005, c. 765; 2015, c. 611.

§ 13.1-628. Emergency powers

A. In anticipation of or during an emergency defined in subsection D, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

2. One or more officers of the corporation present at a meeting of the board of directors may be deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

1. Binds the corporation; and

2. May not be used to impose liability on a director, officer, employee, or agent of the corporation.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

1985, c. 522; 2005, c. 765.

§ 13.1-629. Ultra vires

A. Except as provided in subsection B of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a shareholder against the corporation to enjoin the act;

2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

3. In a proceeding against a corporation before the Commission.

C. In a shareholder's proceeding under subdivision 1 of subsection B of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Code 1950, § 13.1-5; 1956, c. 428; 1985, c. 522.

Article 5 - NAME

§ 13.1-630. Corporate name

A. A corporate name shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." Such words and their corresponding abbreviations may be used interchangeably for all purposes.

B. A corporate name shall not contain:

1. Any language stating or implying that it will transact one of the special kinds of businesses listed in § 13.1-620 unless it proposes in fact to engage in such special kind of business;

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended;

3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company or a limited partnership; or

4. Any word or phrase that is prohibited by law for such corporation.

C. Except as authorized by subsection D, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in a form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § 13.1-544.1,

subsection A of § 13.1-1012, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

Code 1950, § 13.1-6; 1956, c. 428; 1968, c. 241; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. 592; 2005, cc. 379, 765; 2009, c. 216; 2012, c. 63.

§ 13.1-631. Reserved name

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation. The corporate name applied for need not comply with subsection A of § 13.1-630. If the Commission finds that the corporate name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved corporate name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

Code 1950, § 13.1-7; 1956, c. 428; 1985, c. 522; 2005, c. 765; 2015, c. 444.

§ 13.1-632. Registered name

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § 13.1-762, if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection C of § 13.1-630.

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § 13.1-762, by:

1. Filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § 13.1-762, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the

state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee in the amount of $20. Except as provided in subsection E, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B, and paying a renewal fee of $20. The renewal application is effective when filed in accordance with this section and, except as provided in subsection E, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in the Commonwealth under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in the Commonwealth or consents to the authorization of another foreign corporation to transact business in the Commonwealth under the registered name.

F. A foreign corporation that has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of $10.

Code 1950, § 13.1-8; 1956, c. 428; 1981, c. 522; 1984, c. 771; 1985, c. 522; 1995, c. 114; 2005, c. 765.

§ 13.1-633. Repealed

Repealed by Acts 2007, c. 771, cl. 2.

Article 6 - OFFICE AND AGENT

§ 13.1-634. Registered office and registered agent

A. Each corporation shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of this Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-9; 1956, c. 428; 1975, c. 407; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541.

§ 13.1-635. Change of registered office or registered agent

A. A corporation may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-634.

B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-634.

C. A corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-634. In either instance, the registered agent or surviving entity shall forthwith file a statement as required

above, which shall recite that a copy of the statement shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-10; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. 597; 2010, cc. 434, 782.

§ 13.1-636. Resignation of registered agent

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2005, c. 765; 2010, c. 434.

§ 13.1-637. Service on corporation

A. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Code 1950, §§ 13-12, 13-14, 13.1-11; 1956, c. 428; 1985, c. 522; 1986, c. 622; 1991, c. 672; 1995, c. 411; 2001, cc. 517, 541.

Article 7 - SHARES AND DISTRIBUTIONS

§ 13.1-638. Authorized shares

A. The articles of incorporation shall set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to

issue. If more than one class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series and shall describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights and limitations of that class or series. Except to the extent varied as permitted by this section or by subsection B of § 13.1-646, all shares of a class or series shall have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

B. The articles of incorporation shall authorize:

1. One or more classes or series of shares that together have unlimited voting rights; and

2. One or more classes or series of shares, which may be the same class or classes or series as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

C. The articles of incorporation may authorize one or more classes or series of shares that:

1. Have special, conditional or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

2. Are redeemable or convertible as specified in the articles of incorporation:

a. At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

b. For cash, indebtedness, securities, or other property; and

c. At prices and in amounts specified or determined in accordance with a formula;

3. Entitle the holders to distributions, calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

4. Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation; or

5. Entitle the holders to other specified rights, including a right that no transaction of a specified nature shall be consummated while any such shares remain outstanding except upon the assent of all or a specified portion of such shares.

D. Any of the terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-604.

E. Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

F. The description of the preferences, rights, and limitations of classes or series of shares in subsection C is not exhaustive.

Code 1950, §§ 13.1-12, 13.1-13; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1990, c. 423; 2005, c. 765.

§ 13.1-639. Terms of class or series determined by board of directors

A. If the articles of incorporation so provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes;

2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

B. If the board of directors acts pursuant to subsection A, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under § 13.1-638, of:

1. Any class of shares before the issuance of any shares of that class, or

2. Any series within a class before the issuance of any shares of that series.

C. Unless the articles of incorporation otherwise provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation, delete from the articles of incorporation any provisions originally adopted by the board of directors without shareholder action fixing the preferences, limitations and rights of any class of shares or series within a class, provided there are no shares of such class or series then outstanding.

D. Unless the articles of incorporation otherwise provide, the board of directors of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes; or

2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

E. When the board of directors has adopted an amendment of the articles of incorporation pursuant to subsection A, C or D, the corporation shall file with the Commission articles of amendment that set forth:

1. The name of the corporation;

2. The text of the amendment, including any determination made pursuant to subsection B;

3. The date it was adopted; and

4. A statement that the amendment was duly adopted by the board of directors.

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are the subject of the articles of amendment shall not be issued until the certificate of amendment is effective.

Code 1950, § 13.1-14; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1988, c. 193; 2005, c. 765; 2006, c. 330.

§ 13.1-640. Issued and outstanding shares

A. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

B. The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection C of this section and to § 13.1-653.

C. At all times that shares of the corporation are issued and outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

1985, c. 522.

§ 13.1-641. Fractional shares

A. A corporation may, if authorized by its board of directors:

1. Issue fractions of a share or pay in money the value of fractions of a share;

2. Arrange for disposition of fractional shares by the shareholders; or

3. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

B. Each certificate representing scrip shall be conspicuously labeled "Scrip" and shall contain the information required by subsection B of § 13.1-647.

C. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

D. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

1. That the scrip will become void if not exchanged for full shares before a specified date; and

2. That the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds paid to the scripholders.

E. When a corporation is to pay in money the value of fractions of a share such value shall be determined by the board of directors. A good faith judgment of the board of directors as to the value of a fractional share is conclusive.

Code 1950, § 13.1-21; 1956, c. 428; 1958, c. 564; 1966, c. 466; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765.

§ 13.1-642. Subscription for shares before incorporation

A. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides otherwise or all the subscribers agree to revocation.

B. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

C. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

D. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. The articles of incorporation, bylaws or the subscription agreement may prescribe other penalties for nonpayment but a subscription and the installments already paid on it may not be forfeited unless the corporation demands the amount due by written notice to the subscriber and it remains unpaid for at least 20 days after the effective date of the notice.

E. If a subscription for unissued shares is forfeited for nonpayment under subsection D, the corporation may sell the shares subscribed for. If the shares are sold by reason of any forfeiture for more than the amount due on the subscription, the corporation shall pay the excess, after deducting the expense of sale, to the subscriber or the subscriber's representative.

F. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to § 13.1-643.

Code 1950, §§ 13-98, 13.1-15; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522; 2005, c. 765.

§ 13.1-643. Issuance of shares

A. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

B. Any issuance of shares must be authorized by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

C. A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

E. Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.

Code 1950, §§ 13-97, 13-98, 13.1-15, 13.1-17; 1956, c. 428; 1958, c. 564; 1964, c. 352; 1972, c. 580; 1975, c. 500; 1985, c. 522.

§ 13.1-644. Liability for shares issued before payment

A. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in § 13.1-643 or specified in the subscription agreement under § 13.1-642.

B. A person who becomes a transferee of shares in good faith and without knowledge that the consideration determined for the shares pursuant to § 13.1-643 or specified in the subscription agreement pursuant to § 13.1-642 has not been paid is not personally liable for any unpaid portion of the consideration, but the initial transferor remains liable therefor.

C. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not, in any event, be personally liable to the corporation as transferee of a purchaser from the corporation of its own shares but the estate of the purchaser and his assets in the hands of such personal representative shall be so liable.

D. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Code 1950, §§ 13-97, 13.1-22; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§ 13.1-645. Share dividends

A. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

B. Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (i) the articles of incorporation so authorize, (ii) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (iii) there are no outstanding shares of the class or series to be issued. For purposes of this subsection, if a security convertible into or carrying a right to subscribe for or acquire shares of the class or series to be issued is outstanding, the holders shall be deemed to be holders of the class or series.

C. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Code 1950, §§ 13-37, 13.1-19; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522.

§ 13.1-646. Share options

A. Subject to the provisions of § 13.1-651, a corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. Unless reserved to the shareholders in the articles of incorporation, the board of directors may authorize the issuance of rights, options or warrants and determine (i) the terms upon which the rights, options or warrants are issued and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization for the corporation to issue such rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

B. Notwithstanding the provisions of subsection A of § 13.1-638, the terms of rights, options or warrants issued by a corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt thereof by designated persons or classes of persons or that invalidate or void such rights, options, or warrants held by designated persons or classes of persons. Any action or determination by the board of directors with respect to the issuance, the terms of or the redemption of rights, options, or warrants shall be subject to the provisions of § 13.1-690 and shall be valid if taken or determined in compliance therewith.

C. The board of directors may authorize one or more officers to (i) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (ii) determine, within an amount and subject to any other limitations established by the board and, if applicable, the shareholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer may not use such authority to designate himself, or any other person specified by the board of directors, as a recipient of such rights, options, warrants, or other equity compensation awards.

1985, c. 522; 1986, c. 74; 1988, c. 442; 1990, c. 423; 1992, c. 472; 2005, c. 765; 2010, c. 782.

§ 13.1-647. Form and content of certificates evidencing shares and form of bonds

A. Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

B. At a minimum each share certificate shall state on its face:

1. The name of the issuing corporation and that it is organized under the law of this Commonwealth;

2. The name of the person to whom issued; and

3. The number and class of shares and the designation of the series, if any, the certificate represents.

C. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) shall be summarized on the front or back of each certificate for shares of such class or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

D. Each share certificate (i) shall be signed by two officers designated in the bylaws or by the board of directors and (ii) may bear the corporate seal or its facsimile. Unless otherwise provided in the articles of incorporation or bylaws, any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

E. On any bond, note or debenture issued by a corporation that is countersigned or otherwise authenticated by the manual signature of a trustee, the signatures of the officers of the corporation and its seal may be facsimiles.

F. If the person who signed, either manually or in facsimile, a share certificate or bond, note or debenture no longer holds office when the certificate or bond, note or debenture is issued, the certificate or bond, note or debenture is nevertheless valid.

Code 1950, § 13.1-20; 1956, c. 428; 1958, c. 564; 1972, c. 580; 1984, c. 613; 1985, c. 522; 1986, c. 623; 1990, c. 227; 2005, c. 765.

§ 13.1-648. Shares without certificates

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

B. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections B and C of § 13.1-647, and, if applicable, § 13.1-649.

Code 1950, § 13.1-20; 1956, c. 428; 1958, c. 564; 1972, c. 580; 1984, c. 613; 1985, c. 522.

§ 13.1-649. Restriction on transfer of shares and other securities

A. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

B. A restriction on the transfer or registration of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or in the information statement required by subsection B of § 13.1-648. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

C. A restriction on the transfer or registration of transfer of shares is authorized:

1. To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

2. To preserve exemptions under federal or state securities law; and

3. For any other reasonable purpose.

D. A restriction on the transfer or registration of transfer of shares may:

1. Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

2. Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

3. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

4. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

E. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares.

1985, c. 522; 2005, c. 765; 2015, c. 611.

§ 13.1-650. Expense of issue

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

1985, c. 522.

§ 13.1-651. Shareholders' preemptive rights

A. Unless limited or denied in the articles of incorporation and subject to the limitations in subsections D through G, the shareholders of a corporation incorporated on or before December 31, 2005, have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

B. Unless otherwise provided for in the articles of incorporation, the shareholders of a corporation incorporated after December 31, 2005, have no preemptive right to acquire the corporation's unissued shares upon the decision of the board of directors to issue them.

C. Except to the extent that the articles of incorporation expressly provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

D. Unless expressly conferred in the articles of incorporation, there is no preemptive right with respect to:

1. Shares issued to officers or employees of the corporation or of its subsidiaries pursuant to a plan approved by the shareholders; or

2. Shares sold other than for money.

E. Holders of shares of any class with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

F. Holders of shares of any class without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into, or carry a right to subscribe for or acquire, shares without preferential rights.

G. Holders of shares without general voting rights and without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with general voting rights but without preferential rights to distributions or assets.

H. Except to the extent that the articles of incorporation expressly provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at

a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

I. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares.

Code 1950, § 13.1-23; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765.

§ 13.1-652. Corporation's acquisition of its own shares

A. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares of the same class, if any, but undesignated as to series.

B. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon the issuance of a certificate of amendment. The corporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;

2. The reduction in the number of authorized shares, itemized by class and series;

3. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and

4. A statement that the reduction in the number of authorized shares was authorized by the board of directors. The articles of amendment may be adopted by the board of directors without shareholder action.

C. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13.1-65, 13.1-66; 1956, c. 428; 1958, c. 564; 1985, c. 522; 2005, c. 765.

§ 13.1-653. Distributions to shareholders

A. A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection C.

B. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

C. No distribution may be made if, after giving it effect:

1. The corporation would not be able to pay its debts as they become due in the usual course of business; or

2. The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon

dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

D. The board of directors may base a determination that a distribution is not prohibited under subsection C either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. For any public corporation, reliance upon the most recent financial statements that have been prepared in accordance with accounting principles generally accepted in the United States shall be deemed to be reasonable in the circumstances if the financial statements have been audited by independent certified public accountants whose certification does not include a going concern qualification.

E. Except as provided in subsection G, the effect of a distribution under subsection C is measured:

1. In the case of a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

2. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

3. In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

F. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

G. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection C if its terms provide that payments of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

H. This section shall not apply to distributions in liquidation under Article 16 (§ 13.1-742 et seq.) of this chapter.

Code 1950, §§ 13-206, 13.1-4, 13.1-43, 13.1-62; 1956, c. 428; 1962, c. 14; 1979, c. 175; 1985, c. 522; 2005, c. 765.

Article 8 - SHAREHOLDERS

§ 13.1-654. Annual meeting

A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 13.1-657, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. Annual shareholders' meetings may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Code 1950, § 13.1-25; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1990, c. 228; 2003, c. 728; 2005, c. 765; 2007, c. 165; 2012, c. 706.

§ 13.1-655. Special meeting

A. A corporation shall hold a special meeting of shareholders:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the case of corporations having 35 or fewer shareholders of record, if the holders of at least 20 percent of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. The articles of incorporation may provide for an increase or decrease in the percentage stated in this subdivision.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

D. Special shareholders' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-658 may be conducted at a special shareholders' meeting.

Code 1950, § 13.1-25; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2003, c. 728; 2005, c. 765; 2012, c. 706.

§ 13.1-656. Court-ordered meeting

A. The circuit court of the city or county where a corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, may, after notice to the corporation, order a meeting of shareholders to be held:

1. On petition of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within 15 months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

2. On petition of a shareholder who signed a demand for a special meeting that satisfies the requirements of § 13.1-655 if:

a. Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

b. The special meeting was not held in accordance with the notice.

B. The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

1985, c. 522; 2005, c. 765; 2007, c. 165; 2010, c. 782.

§ 13.1-657. Action without meeting

A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders entitled to vote on the action, in which case no action by the board of directors shall be required. The adoption or taking of the action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. The articles of incorporation may authorize action by shareholders by less than unanimous written consent provided that the taking of such action is consistent with any requirements that may be set forth in the corporation's articles of incorporation, the bylaws, or this section. For such action to be valid:

1. It shall be an action that this chapter requires or permits to be adopted or taken at a shareholders' meeting;

2. The corporation's articles of incorporation shall authorize action by shareholders by less than unanimous written consent and, if a public corporation at the time of such authorization, the inclusion of the authorization in the articles of incorporation shall be approved by each voting group entitled to vote by the greater of:

a. The vote of that voting group required by the corporation's articles of incorporation to amend the articles of incorporation; and

b. More than two-thirds of all votes that the voting group is entitled to cast on the amendment;

3. Before the holders of more than 10 percent of the outstanding shares of any voting group entitled to vote on the action to be adopted or taken have executed the written consent, the corporation's secretary shall have received a copy of the form of written consent setting forth the action to be adopted or taken; and

4. The holders of not less than the minimum number of outstanding shares of each voting group entitled to vote on the action that would be required to adopt or take the action at a shareholders' meeting at which all shares of each voting group entitled to vote on the action were present and voted shall have signed written consents setting forth the action to be adopted or taken.

The written consent shall bear the date on which each shareholder signed the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required respecting the action to be adopted or taken without a meeting, the record date for determining the shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is required respecting the action to be adopted or taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to adopt or take the action referred to therein unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to adopt or take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to adopt or take the action are delivered to the corporation.

D. A consent signed pursuant to the provisions of this section has the effect of a vote at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action adopted or taken by written consent shall be effective when (i) written consents signed by the holders of shares having sufficient votes to adopt or take the action are delivered to the corporation or (ii) if an effective date is specified therein, as of such date provided such consent states the date of execution by the consenting shareholder.

E. Any person, whether or not then a shareholder, may provide that a consent in writing as a shareholder shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the

consent to be effective, provided that (i) the person is a shareholder at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

F. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

G. If action is adopted or taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

Code 1950, § 13.1-28; 1956, c. 428; 1985, c. 522; 1999, c. 416; 2003, c. 728; 2005, c. 765; 2007, c. 165; 2008, c. 91; 2010, c. 782; 2012, c. 706; 2015, c. 611.

§ 13.1-658. Notice of meeting

A. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

B. Unless the articles of incorporation or this chapter requires otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to shareholders.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-660, however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

F. Notwithstanding the foregoing, no notice of a shareholders' meeting need be given to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the shareholder's address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

Code 1950, § 13.1-26; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 301; 1985, c. 522; 1999, c. 102; 2001, c. 545; 2002, cc. 1, 285; 2005, c. 765; 2010, c. 782; 2015, c. 611.

§ 13.1-659. Waiver of notice

A. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A shareholder's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Code 1950, § 13.1-27; 1956, c. 428; 1985, c. 522.

§ 13.1-660. Record date

A. The bylaws may fix or provide the manner of fixing in advance the record date or dates for one or more voting groups in order to make a determination of shareholders for any purpose. If the

bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

C. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

E. The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled to both notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Code 1950, §§ 13-192, 13.1-29; 1952, c. 88; 1956, c. 428; 1985, c. 522; 2005, c. 765; 2010, c. 782.

§ 13.1-660.1. Conduct of the meeting

A. At each meeting of shareholders, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and closed upon the final adjournment of the meeting.

2005, c. 765.

§ 13.1-660.2. Remote participation in annual and special meetings

A. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with sub-section B.

B. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a shareholder; and

2. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

2010, c. 782.

§ 13.1-661. Shareholders' list for meeting

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § 13.1-660 to determine the shareholders entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and within each group by class or series of shares, and show the address of and number of shares held by each shareholder.

B. The shareholders' list for notice shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting of shareholders. A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection D of § 13.1-771, to copy a list, during the regular business hours and at the shareholder's expense, during the period it is available for inspection.

C. The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect a shareholders' list before or at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a shareholders' list does not affect the validity of action taken at the meeting.

Code 1950, § 13.1-30; 1956, c. 428; 1964, c. 418; 1975, c. 500; 1985, c. 522; 2010, c. 782; 2012, c. 706.

§ 13.1-662. Voting entitlement of shares

A. Except as provided in subsections B, C, D and E or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

B. Unless the articles of incorporation provide otherwise, in the election of directors each outstanding share, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the shareholder has a right to vote.

C. Shares that have been called for redemption are not entitled to vote on any matter and, except as to any right of conversion, shall not be deemed outstanding shares after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution with irrevocable instruction and authority to pay the holders the redemption price on surrender of the shares. Such instruction may provide that the amount so deposited and any interest thereon not claimed within a specified period, not less than two years, after the redemption date shall be repaid to the corporation whose shares are so redeemed, and the persons entitled thereto shall thereafter have only the right to receive the redemption price as unsecured creditors of such corporation.

D. The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

E. If a corporation holds in a fiduciary capacity its own shares or shares of a second corporation that owns directly or indirectly a majority of shares entitled to vote for directors of the first corporation, such shares shall not be deemed to be outstanding and entitled to vote unless:

1. The corporation has authority to vote the shares only in accordance with directions of the principal or beneficiary; or

2. A co-fiduciary exists, pursuant to § 6.2-1011 or otherwise, in which event the co-fiduciary may vote the shares.

F. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

G. Shares standing in the name of a partnership may be voted by any partner. Shares standing in the name of a limited liability company may be voted as the articles of organization or an oper-

ating agreement may prescribe, or in the absence of any such provision as the managers, or if there are no managers, the members of the limited liability company may determine.

H. Shares held by two or more persons as joint tenants or tenants in common or tenants by the entirety may be voted by any of such persons. If more than one of such tenants votes such shares, the vote shall be divided among them in proportion to the number of such tenants voting.

I. Shares held by an administrator, executor, guardian, conservator, committee or curator representing the shareholder may be voted by such person without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by the trustee, but no trustee is entitled to vote shares held by the trustee without a transfer of such shares into the trustee's name.

J. Shares standing in the name of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by such person. Shares held by or under the control of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by such person without the transfer thereof into such person's name if authority to do so is contained in an order of the court by which such person was appointed.

K. Nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee pursuant to § 6.2-1010 from causing such shares to be voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

L. A shareholder whose shares are pledged is entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote the shares so transferred.

M. The articles of incorporation may provide that the holders of bonds or debentures shall be entitled to vote on specified matters and such right shall not be terminated except upon consent of the holders of two-thirds in aggregate principal amount.

N. Subject to the provisions of § 13.1-665, when shares are held by more than one of the fiduciaries referred to in this section, the shares shall be voted as determined by a majority of such fiduciaries, except that: (i) if they are equally divided as to a vote, the vote of the shares is divided equally and (ii) if only one of such fiduciaries is present in person or by proxy at a meeting, the fiduciary shall be entitled to vote all the shares. A proxy apparently executed by one of several of such fiduciaries shall be presumed to be valid until challenged and the burden of proving invalidity shall rest on the challenger.

Code 1950, §§ 13-192 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 1990, c. 267; 1997, c. 801; 2005, c. 765.

§ 13.1-663. Proxies

A. A shareholder may vote the shareholder's shares in person or by proxy.

B. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A pledgee;

2. A person who purchased or agreed to purchase the shares;

3. A creditor of the corporation who extended it credit under terms requiring the appointment;

4. An employee of the corporation whose employment contract requires the appointment; or

5. A party to a voting agreement created under § 13.1-671.

E. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

H. Subject to § 13.1-665 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

I. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 1991, c. 405; 2005, c. 765; 2010, c. 782.

§ 13.1-664. Shares held by nominees

A. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

B. The procedure may set forth:

1. The types of nominees to which it applies;

2. The rights or privileges that the corporation recognizes in a beneficial owner;

3. The manner in which the procedure is selected by the nominee;

4. The information that must be provided when the procedure is selected;

5. The period for which selection of the procedure is effective; and

6. Other aspects of the rights and duties created.

1985, c. 522.

§ 13.1-664.1. Voting procedures and inspectors of elections

A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector, before entering upon the discharge of his duties, shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxy appointments and ballots, (iii) count all votes, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify in a written report their determination of the number of shares represented at the meeting and their count of the votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in this Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In performing their duties, the inspectors may examine (i) the proxy appointment forms and any other information provided in accordance with subsection B of § 13.1-663, (ii) any envelope or related writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or

other information specified in § 13.1-665, and (v) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

E. The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection B, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall specify in their report under subsection B the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

F. Determinations of law by the inspectors shall be subject to de novo review by a court in a proceeding under § 13.1-669.1 or other judicial proceeding.

G. If authorized by the board of directors, any shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder's proxy. A share that is voted by a ballot submitted by electronic transmission is deemed present at the meeting of shareholders.

1991, c. 405; 2002, c. 285; 2005, c. 765; 2010, c. 782; 2015, c. 611.

§ 13.1-665. Corporation's acceptance of votes

A. If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

B. If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

1. The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable

to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the shares in an order of the court by which such person was appointed has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

4. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

5. Two or more persons are the shareholder as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and B 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of shares in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

E. Neither the corporation nor the person authorized to count votes, including an inspector under § 13.1-664.1, who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-663 is liable in damages to the shareholder for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 2005, c. 765; 2015, c. 611.

§ 13.1-666. Quorum and voting requirements for voting groups

A. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incor-

poration or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

B. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes. An abstention or an election by a shareholder not to vote on the action because of the failure to receive voting instructions from the beneficial owner of the shares shall not be considered a vote cast.

D. Less than a quorum may adjourn a meeting.

E. The election of directors is governed by § 13.1-669.

Code 1950, § 13.1-31; 1956, c. 428; 1985, c. 522; 2007, c. 165.

§ 13.1-667. Action by single and multiple voting groups

A. If the articles of incorporation or this chapter provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 13.1-665.

B. If the articles of incorporation or this chapter provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 13.1-666. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

1985, c. 522.

§ 13.1-668. Change in quorum or voting requirements

A. The articles of incorporation may provide for (i) a lesser or greater quorum requirement for shareholders, but not less than one-third of the shares eligible to vote, or voting groups of shareholders, or (ii) a greater voting requirement for shareholders, or voting groups of shareholders, than is provided by this chapter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

Code 1950, § 13.1-33; 1956, c. 428; 1985, c. 522; 1986, c. 321.

§ 13.1-669. Voting for directors; cumulative voting

A. Unless otherwise provided in the articles of incorporation or the bylaws, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

B. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of shareholders are entitled to cumulate their votes for directors" or words of similar import means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A shareholder who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate his votes during the meeting. If one shareholder gives such a notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

E. If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors, directors may not be elected by written consent pursuant to § 13.1-657 unless it is unanimous.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 2005, c. 765; 2007, c. 165.

§ 13.1-669.1. Judicial determination of corporate officers and review of elections and shareholder votes

A. Upon application of, or in a proceeding commenced by, a person specified in subsection B, the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located may determine:

1. The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

2. The right of an individual to hold the office of director or officer of the corporation;

3. The result or validity of an election or vote by the shareholders of the corporation;

4. The right of a director to membership on a committee of the board of directors; and

5. The right of a person to nominate, or an individual to be nominated as, a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection C of § 13.1-624 or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

B. Any application or proceeding pursuant to subsection A may be filed or commenced by any of the following persons:

1. The corporation;

2. A shareholder of the corporation;

3. A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, who, in each case, is seeking a determination of his right to such office or membership;

4. An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his right to such office; or

5. A person claiming a right covered by subdivision A 5 and who is seeking a determination of such right.

C. In connection with any application or proceeding pursuant to subsection A, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

1. The corporation;

2. An individual whose right to office or membership on a committee of the board of directors is contested;

3. Any individual claiming the office or membership at issue; and

4. Any person claiming a right covered by subdivision A 5 that is at issue.

D. In connection with any application or proceeding under subsection A, service of process may be made upon each of the persons specified in subsection C either by:

1. Serving on the corporation process addressed to such person in any manner provided by statute of the Commonwealth or by rule of the applicable court for service of process on the corporation; or

2. Serving on such person process in any manner provided by statute of the Commonwealth or by rule of the applicable court.

E. When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision D 1, the plaintiff and the corporation promptly shall provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last known residence or business address, or as permitted by statute of the Commonwealth.

F. In connection with any application or proceeding under subsection A, the court shall dispose of the application or proceeding on an expedited basis and also may:

1. Order such additional or further notice as the court deems proper under the circumstances;

2. Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

3. Order an election or meeting be held in accordance with the provisions of § 13.1-656 or otherwise;

4. Appoint a master to conduct an election or meeting;

5. Enter temporary, preliminary, or permanent injunctive relief;

6. Resolve solely for the purposes of the proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection A, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

7. Order such relief as the court determines is equitable, just, and proper.

G. It shall not be necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision C 4, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision F 2.

H. Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as existed prior to July 1, 2015. An application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection A.

2010, c. 782; 2015, c. 611.

§ 13.1-670. Voting trusts

A. One or more shareholders may create a voting trust, conferring on a trustee or trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee or trustees. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

B. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

C. The duration of a voting trust shall be as set forth in the voting trust, except that a voting trust that became effective prior to July 1, 2015, is valid for not more than 10 years after its effective

date unless some or all of the parties to the voting trust extend it by signing a written consent to the extension.

D. Any consent to an extension pursuant to subsection C signed by less than all of the parties to the voting trust binds only the parties signing it.

E. The voting trustee shall deliver copies of any consent to extension and the list of beneficial owners to the secretary at the corporation's principal office.

Code 1950, § 13.1-34; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2015, c. 611.

§ 13.1-671. Voting agreements

A. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of § 13.1-670.

B. A voting agreement created under this section is specifically enforceable.

Code 1950, § 13.1-34; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§ 13.1-671.1. Shareholder agreements

A. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection D of § 13.1-647 and subsection A of § 13.1-693, one or more officers or restricts the discretion or powers of the board of directors or one or more officers;

2. Governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in § 13.1-653;

3. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

5. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation, or among any of them;

6. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

7. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

8. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement; and

2. Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection B of § 13.1-648. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

D. An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if

the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares were issued when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. The duration of an agreement authorized by this section shall be as set forth in the agreement, except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

J. An agreement among shareholders of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the shareholders and the corporation.

1990, c. 337; 1997, c. 226; 2005, c. 765; 2015, c. 611.

§ 13.1-672. Repealed

Repealed by Acts 1992, c. 802 .

Article 8.1 - DERIVATIVE PROCEEDINGS AND OTHER SHAREHOLDER ACTIONS

§ 13.1-672.1. Standing; condition precedent; stay of proceedings

A. A shareholder shall not commence or maintain a derivative proceeding unless the shareholder:

1. Was a shareholder of the corporation at the time of the act or omission complained of;

2. Became a shareholder through transfer by operation of law from one who was a shareholder at that time; or

3. Became a shareholder before public disclosure and without knowledge of the act or omission complained of; and

4. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

B. No shareholder may commence a derivative proceeding until:

1. A written demand has been made on the corporation to take suitable action; and

2. Ninety days have expired from the date delivery of the demand was made unless (i) the shareholder has been notified before the expiration of 90 days that the demand has been rejected by the corporation or (ii) irreparable injury to the corporation would result by waiting until the end of the 90-day period.

C. If the corporation commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

1992, c. 802; 2007, c. 165; 2010, c. 782.

§ 13.1-672.2. Discontinuance or settlement

A. A derivative proceeding shall not be settled or discontinued without the court's approval. If the court determines that the discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of the corporation's shareholders, the court shall direct that notice be given to the shareholders affected.

B. Notice required under this section shall be given in such manner as the court shall determine, and the costs of such notice shall be borne in such manner as the court shall direct.

1992, c. 802 .

§ 13.1-672.3. Foreign corporations

Notwithstanding the provisions of §§ 13.1-672.1 and 13.1-672.4, in any derivative proceeding in the right of a foreign corporation, subject to the court's determination of whether the courts of the Commonwealth are a convenient forum for such a proceeding, determinations of (i) standing and satisfaction of conditions precedent to commencing and maintaining derivative proceedings and (ii) grounds for dismissal of derivative proceedings, shall be governed by the laws of the foreign corporation's state of incorporation.

1992, c. 802; 2005, c. 765.

§ 13.1-672.4. Dismissal

A. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection B or E has:

1. Conducted a review and evaluation, adequately informed in the circumstances, of the allegations made in the demand or complaint;

2. Determined in good faith on the basis of that review and evaluation that the maintenance of the derivative proceeding is not in the best interests of the corporation; and

3. Submitted in support of the motion a short and concise statement of the reasons for its determination.

B. Unless a panel is appointed pursuant to subsection E, the determination in subsection A shall be made by:

1. A majority vote of disinterested directors present at a meeting of the board of directors if the disinterested directors constitute a quorum; or

2. A majority vote of a committee consisting of two or more disinterested directors appointed by a majority vote of disinterested directors present at a meeting of the board of directors, whether or not such disinterested directors constituted a quorum.

C. If a derivative proceeding has been commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection A have not been met. The plaintiff shall be entitled to discovery with respect to the issues presented by the motion only if and to the extent that the complaint alleges such facts with particularity.

D. The plaintiff shall have the burden of proving that the requirements of subsection A have not been met, except that the corporation shall have the burden with respect to the issue of independence under subsection B if the complaint alleges with particularity facts raising a substantial question as to such independence.

E. The court may appoint a panel of independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

1992, c. 802; 1993, c. 233; 2005, c. 765.

§ 13.1-672.5. Payment of and security for expenses

On termination of a derivative proceeding, the court shall:

1. Order the corporation to pay the plaintiff's reasonable expenses (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

2. Order the plaintiff or the plaintiff's attorney to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained arbitrarily, vexatiously or not in good faith.

1992, c. 802; 1993, c. 233 .

§ 13.1-672.6. Shareholder action to appoint custodian or receiver for a public corporation

A. The circuit court in any city or county where a public corporation's principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was last located may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a public corporation in a proceeding by a shareholder where it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

2. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

B. The court:

1. May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

2. Shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

3. Has jurisdiction over the corporation and all of its property, wherever located.

C. The court may appoint an individual or domestic or foreign corporation, authorized to transact business in the Commonwealth, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

D. The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

1. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

2. A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver in all courts of the Commonwealth.

E. The court during a custodianship may designate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

F. The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

2007, c. 165.

Article 9 - DIRECTORS AND OFFICERS

§ 13.1-673. Requirement for and duties of board of directors

A. Except as provided in an agreement authorized by § 13.1-671.1, each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 13.1-671.1.

Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522; 1990, c. 337; 2005, c. 765.

§ 13.1-674. Qualification of directors or for nomination for director

A. The articles of incorporation or bylaws may prescribe qualifications for directors or to be nominated as directors.

B. A requirement that is based on a past, current, or prospective action, or on an expression of an opinion, by a nominee or director that (i) relates to the discharge of a director's duties and (ii) could limit the ability of the nominee or director to discharge his duties as a director is not a permissible qualification for a nominee or director under this section. Permissible qualifications for a nominee or director under this section include the person's not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

C. A director need not be a resident of this Commonwealth or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

D. A qualification for nomination for director that is prescribed before a person's nomination shall apply to the person at the time of his nomination. A qualification for nomination for director that is prescribed after a person's nomination shall not apply to the person with respect to such nomination.

E. A qualification for directors that is prescribed before a person's nomination for director may provide that it applies (i) only at the start of the director's term or (ii) during that person's term as director. A qualification for directors prescribed during a director's term shall not apply to that director prior to the end of that director's term.

Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522; 2012, c. 706; 2015, c. 611.

§ 13.1-675. Number and election of directors

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The shareholders may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or by the board of directors. After shares are issued, only the shareholders may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-678.

E. No individual shall be named or elected as a director without his prior consent.

Code 1950, § 13.1-36; 1956, c. 428; 1968, c. 87; 1973, c. 50; 1974, c. 662; 1977, c. 123; 1982, c. 104; 1985, c. 522; 1991, c. 112; 2005, c. 765; 2006, c. 330; 2010, c. 782.

§ 13.1-676. Election of directors by certain classes of shareholders

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Code 1950, § 13.1-37; 1956, c. 428; 1985, c. 522.

§ 13.1-677. Terms of directors generally

A. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected, unless their terms are staggered pursuant to § 13.1-678, in which case the term shall expire at the applicable second or third annual shareholders' meeting.

B. The terms of all other directors expire at the next, or if the terms are staggered in accordance with § 13.1-678, at the applicable second or third, annual shareholders' meeting following their election.

C. A decrease in the number of directors does not shorten an incumbent director's term.

D. The term of a director elected by the board of directors to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

E. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors, if any.

F. Notwithstanding the foregoing provisions, the terms of the directors of a corporation registered under the Investment Company Act of 1940 shall expire according to, and otherwise be governed by, the provisions of the Investment Company Act of 1940.

Code 1950, § 13.1-36; 1956, c. 428; 1968, c. 87; 1973, c. 50; 1974, c. 662; 1977, c. 123; 1982, c. 104; 1985, c. 522; 1990, c. 228; 2005, c. 765; 2007, c. 165.

§ 13.1-678. Staggered terms for directors

A. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting.

Code 1950, § 13.1-37; 1956, c. 428; 1985, c. 522.

§ 13.1-679. Resignation of directors

A. A director may resign at any time by delivering a written resignation to the board of directors or its chairman, or to the secretary of the corporation.

B. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the occurrence of one or more events. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

1985, c. 522; 1991, c. 124; 2005, c. 765; 2007, c. 165.

§ 13.1-680. Removal of directors by shareholders

A. The shareholders may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice shall state that the purpose, or one of the purposes of the meeting, is removal of the director.

E. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

Code 1950, §§ 13-205, 13.1-42; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2005, c. 765.

§ 13.1-681. Repealed

Repealed by Acts 2010, c. 782, cl. 2.

§ 13.1-682. Vacancy on board of directors

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The shareholders may fill the vacancy;

2. The board of directors may fill the vacancy; or

3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of shareholders, only the shareholders of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the board of directors.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § 13.1-679 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

Code 1950, § 13.1-38; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2007, c. 165.

§ 13.1-683. Compensation of directors

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522.

§ 13.1-684. Meetings of the board of directors

A. The board of directors may hold regular or special meetings in or out of this Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Code 1950, § 13.1-41; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§ 13.1-685. Action without meeting of board of directors

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the

board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Code 1950, § 13.1-41.1; 1964, c. 419; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2015, c. 611.

§ 13.1-686. Notice of board of directors' meetings

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Code 1950, § 13.1-41; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2002, c. 285; 2005, c. 765; 2010, c. 782.

§ 13.1-687. Waiver of notice by director

A. A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting or promptly upon his arrival

objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Code 1950, § 13.1-27; 1956, c. 428; 1985, c. 522.

§ 13.1-688. Quorum and voting by directors

A. Unless the articles of incorporation or bylaws require a greater number for the transaction of all business or any particular business, or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or

2. A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or

2. The director votes against, or abstains from, the action taken.

E. Except as provided in § 13.1-671.1, a director shall not vote by proxy.

F. Whenever this chapter requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of shareholders.

Code 1950, §§ 13-206, 13-207, 13.1-39, 13.1-44; 1956, c. 428; 1966, c. 131; 1985, c. 522; 1992, c. 471; 2005, c. 765.

§ 13.1-689. Committees

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of members to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § 13.1-688.

C. Sections 13.1-684 through 13.1-688, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 13.1-673, except that a committee may not:

1. Approve or recommend to shareholders action that this chapter requires to be approved by shareholders;

2. Fill vacancies on the board or on any of its committees;

3. Amend articles of incorporation pursuant to § 13.1-706;

4. Adopt, amend, or repeal the bylaws;

5. Approve a plan of merger not requiring shareholder approval;

6. Authorize or approve a distribution, except according to a general formula or method prescribed by the board of directors; or

7. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and rights, preferences, and limitations of a class or series of shares, except that the board of directors may (i) authorize a committee to do so subject to such limits, if any, as may be prescribed by the board of directors, and (ii) authorize a senior executive officer of the corporation to do so subject to such limits, if any, as may be prescribed by the board of directors or by subsection C of § 13.1-646.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 13.1-690.

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously may appoint another director to act in place of the absent or disqualified member.

Code 1950, § 13.1-40; 1956, c. 428; 1975, c. 500; 1980, c. 341; 1985, c. 522; 2005, c. 765; 2010, c. 782.

§ 13.1-690. General standards of conduct for director

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

Code 1950, §§ 13-206, 13-207, 13.1-44; 1956, c. 428; 1985, c. 522.

§ 13.1-690.1. Director of open-end management investment company deemed independent and disinterested

A director of a corporation that is an open-end management investment company, as defined by the Investment Company Act of 1940, who with respect to the corporation is not an interested person, as defined by the Investment Company Act of 1940, shall be deemed to be independent and disinterested when making any determination or taking any action as a director.

2006, c. 330.

§ 13.1-691. Director conflict of interests

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes the director from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

2. The material facts of the transaction and the director's interest were disclosed to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

3. The transaction was fair to the corporation.

B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors vote to

authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who is not disinterested may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Code 1950, § 13.1-39.1; 1975, c. 500; 1980, c. 341; 1985, c. 522; 2005, c. 765.

§ 13.1-691.1. Business opportunities

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § 13.1-691, as if the decision being made concerned a director's conflict of interests transaction; or

2. Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § 13.1-691, as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2005, c. 765.

§ 13.1-692. Liability for unlawful distributions

A. A director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation and its creditors for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the

articles of incorporation if the party asserting liability establishes that when taking the action the director did not comply with § 13.1-690.

B. A director held liable for an unlawful distribution under subsection A is entitled to:

1. Contribution from every other director who could be held liable under subsection A for the unlawful distribution; and

2. Recoupment from the shareholders who received the unlawful distribution in proportion to the amounts of such unlawful distribution received by them respectively.

C. No suit shall be brought against any director for any liability imposed by subsection A except within two years after the right of action shall accrue.

D. Contribution or recoupment under subsection B is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection A.

Code 1950, §§ 13-206, 13-207, 13.1-44; 1956, c. 428; 1985, c. 522; 2005, c. 765.

§ 13.1-692.1. Limitation on liability of officers and directors; exception

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the shareholders, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) $100,000 or (ii) the amount of cash compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed.

B. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including, without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

C. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

1987, cc. 59, 257; 1988, c. 561.

§ 13.1-693. Required officers

A. Except as provided in an agreement authorized by § 13.1-671.1, a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-604.

B. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have the responsibility for preparing and maintaining custody of minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in a corporation.

Code 1950, § 13.1-45; 1956, c. 428; 1972, c. 606; 1975, c. 500; 1982, c. 372; 1985, c. 522; 1994, c. 189; 2005, c. 765.

§ 13.1-694. Duties of officers

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Code 1950, § 13.1-45; 1956, c. 428; 1972, c. 606; 1975, c. 500; 1982, c. 372; 1985, c. 522.

§ 13.1-695. Resignation and removal of officers

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

Code 1950, § 13.1-46; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, cc. 124, 146; 2005, c. 765.

Article 10 - INDEMNIFICATION

§ 13.1-696. Definitions

In this article:

"Corporation" includes any domestic corporation and any domestic or foreign predecessor entity of a domestic corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means, (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an officer, as contemplated in § 13.1-702, the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765; 2009, c. 587.

§ 13.1-697. Authority to indemnify

A. Except as provided in subsection D, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if the director:

1. Conducted himself in good faith; and

2. Believed:

a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

b. In all other cases, that his conduct was at least not opposed to its best interests; and

3. In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision A 2 b.

C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

D. Unless ordered by a court under subsection C of § 13.1-700.1, a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765.

§ 13.1-698. Mandatory indemnification

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522.

§ 13.1-699. Advance for expenses

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if the director is not entitled to mandatory indemnification under § 13.1-698 and it is ultimately determined under § 13.1-700.1 or 13.1-701 that the director has not met the relevant standard of conduct.

B. The undertaking required by subsection A shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made by:

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § 13.1-688, in which authorization directors who do not qualify as disinterested directors may participate; or

2. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765; 2010, c. 782; 2015, c. 611.

§ 13.1-700. Repealed

Repealed by Acts 1987, cc. 59, 257.

§ 13.1-700.1. Court orders for advances, reimbursement or indemnification

A. An individual who is made a party to a proceeding because he is a director of the corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances and/or reimbursement for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of his reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its shareholders, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances and/or reimbursement nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its shareholders, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

1987, cc. 59, 257; 2005, c. 765.

§ 13.1-701. Determination and authorization of indemnification

A. A corporation may not indemnify a director under § 13.1-697 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in § 13.1-697.

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision B 2 to select counsel.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765.

§ 13.1-702. Indemnification of officers

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation is entitled to mandatory indemnification under § 13.1-698, and is entitled to apply for court-ordered indemnification under § 13.1-700.1, in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer of the corporation to the same extent as to a director.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765.

§ 13.1-703. Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify him against the same liability under § 13.1-697 or 13.1-698.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. 765.

§ 13.1-704. Application of article

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification or advances or reimbursement of expenses in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing indemnity or advances or reimbursement of expenses permitted or mandated by this article. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § 13.1-697 and advance funds to pay for or reimburse expenses in accordance with § 13.1-699. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of § 13.1-699 and subsection C of § 13.1-701.

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director or officer that may be authorized by the articles of incorporation or any bylaw made by the shareholders or any resolution adopted, before or after the event, by the shareholders, except an indemnity against (i) his willful misconduct, or (ii) a knowing violation of the criminal law. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § 13.1-699 except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § 13.1-697. Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § 13.1-701. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

D. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

E. This article does not limit a corporation's power to provide indemnity to, advance or reimburse expenses incurred by, or provide or maintain insurance on behalf of an agent or an employee who is not a director or officer.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561; 2005, c. 765; 2007, c. 165; 2010, c. 782.

Article 11 - AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

§ 13.1-705. Authority to amend articles of incorporation

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

Code 1950, § 13.1-55; 1956, c. 428; 1958, c. 564; 1985, c. 522.

§ 13.1-706. Amendment of articles of incorporation by directors

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

1. To delete the names and addresses of the initial directors;

2. To delete the name of the initial registered agent or the address of the initial registered office, if a statement of change described in § 13.1-635 is on file with the Commission;

3. If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

4. To eliminate or change the par value of the shares of any class or series;

5. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," or a similar word or abbreviation in the name, or by adding, deleting, or changing a geographic attribution for the name;

6. If the corporation has or will become a holding company under § 13.1-719.1, to change the corporate name to the former name of the constituent corporation;

7. If the corporation is registered as an open-end management investment company under the Investment Company Act of 1940, to increase or decrease the aggregate number of shares or the number of shares of any class or series within any class that the corporation is authorized to issue; or

8. To make any other change expressly permitted by this chapter to be made without shareholder action.

1985, c. 522; 1989, c. 483; 1990, c. 292; 2005, c. 765; 2006, c. 330; 2015, c. 623.

§ 13.1-707. Amendment of articles of incorporation by directors and shareholders

A. Except where shareholder approval of an amendment of the articles of incorporation is not required by this chapter, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors.

2. After adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination; and

3. The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection D.

B. The board of directors may condition its submission of the proposed amendment on any basis.

C. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

D. Unless this chapter or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.

E. When an exchange, reclassification or change of shares is effected by amendment of the articles of incorporation, and a material difference in right results, or the par value of the shares is changed or the corporate name is changed, the action of the shareholders authorizing the amendment may prescribe a time after which the holders of the old shares shall no longer be entitled to receive distributions or to vote or to exercise any other rights as shareholders until certificates representing the old shares are surrendered in exchange for certificates representing the new shares. But upon such surrender all distributions not paid because of this provision shall be paid without interest.

Code 1950, §§ 13-37, 13.1-19, 13.1-56; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522; 2005, c. 765.

§ 13.1-708. Voting on amendments by voting groups

A. Except as otherwise provided in the articles of incorporation, if a corporation has more than one class of shares outstanding, the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment of the articles of incorporation if shareholder voting is otherwise required by this chapter and if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class;

2. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

3. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

4. Change the rights, preferences, or limitations of all or part of the shares of the class, but such class shall not be entitled to vote as a separate voting group on an amendment increasing the number of authorized shares of a subordinate class solely because both such classes vote on some or all matters as a single voting group;

5. Change the shares of all or part of the class into a different number of shares of the same class;

6. Create a new class of shares or change a class of shares with subordinate and inferior rights into a class of shares, having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class, or increase the rights, preferences, or number of authorized shares of any class that after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

7. In the case of a class of shares with preferential rights, divide the shares into a series, designate the series, and determine, or, unless authority was conferred at the time the class was created, authorize the board of directors to determine, variations in the rights, preferences and limitations among the shares of the respective series;

8. Limit or deny an existing preemptive right of all or part of the shares of the class; or

9. Cancel or otherwise affect rights to distributions that have accumulated but not yet been declared on all or part of the shares of the class.

B. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection A, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

C. If a proposed amendment that entitles two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall

vote together as a single voting group on the proposed amendment, unless the articles of incorporation provide for different voting rights for shares of the different classes or series.

D. Except as otherwise provided in the articles of incorporation, shares that are convertible into shares of another class or series shall not have any right, prior to conversion, to vote on any matter because it affects the class or series into which such shares are convertible.

Code 1950, § 13.1-57; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1996, c. 238; 1997, c. 400; 2005, c. 765; 2008, c. 91.

§ 13.1-709. Amendment before issuance of shares

If a corporation has not yet issued shares, its board of directors or incorporators, in the event that there is no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

1985, c. 522.

§ 13.1-710. Articles of amendment

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;

2. The text of each amendment adopted or the information required by subdivision L 5 of § 13.1-604;

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with subsection L of § 13.1-604;

4. The date of each amendment's adoption;

5. If an amendment was adopted by the board of directors or the incorporators without shareholder approval, a statement that the amendment was duly approved by the board of directors or by a majority of the incorporators, as the case may be, including the reason shareholder and, if applicable, director approval was not required; and

6. If an amendment was approved by the shareholders, either:

a. A statement that the amendment was adopted by unanimous consent of the shareholders, or

b. A statement that the amendment was proposed by the board of directors and submitted to the shareholders in accordance with this chapter and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the amendment;

(2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13.1-58, 13.1-59; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 2002, c. 497; 2005, c. 765; 2015, c. 623.

§ 13.1-711. Restated articles of incorporation

A. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval.

B. The restatement may include one or more new amendments to the articles. If the restatement includes one or more new amendments requiring shareholder approval, the new amendment or amendments shall be adopted and approved as provided in § 13.1-707.

C. If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth:

1. The name of the corporation immediately prior to restatement;

2. Whether the restatement contains a new amendment to the articles;

3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;

4. If the restatement includes a new amendment that provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, which may be made dependent upon facts objectively ascertainable outside the articles of restatement in accordance with subsection L of § 13.1-604;

5. The date of the restatement's adoption;

6. If the restatement does not contain a new amendment to the articles, that the board of directors adopted the restatement;

7. If the restatement contains a new amendment to the articles not requiring shareholder approval, the information required by subdivision A 5 of § 13.1-710; and

8. If the restatement contains a new amendment to the articles requiring shareholder approval, the information required by subdivision A 6 of § 13.1-710.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective the restated articles of incorporation or amended and restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

1985, c. 522; 2002, c. 497; 2005, c. 765; 2007, c. 165; 2012, c. 706.

§ 13.1-712. Repealed

Repealed by Acts 1988, c. 194.

§ 13.1-713. Effect of amendment of articles of incorporation

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Code 1950, § 13.1-60; 1956, c. 428; 1985, c. 522; 2005, c. 765.

§ 13.1-714. Amendment of bylaws by board of directors or shareholders

A. A corporation's shareholders may amend or repeal the corporation's bylaws.

B. A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or this chapter reserves that power exclusively to the shareholders; or

2. Except as provided in subsection D of § 13.1-624, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Code 1950, §§ 13-10, 13.1-24; 1956, c. 428; 1985, c. 522; 2005, c. 765; 2010, c. 782.

§ 13.1-715. Bylaw provisions increasing quorum or voting requirements for directors

A. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

2. If adopted by the board of directors, either by the shareholders or by the board of directors.

B. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the shareholders or the board of directors.

C. Action by the board of directors under subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors must meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

1985, c. 522; 2005, c. 765.

Article 12 - MERGERS AND SHARE EXCHANGES

§ 13.1-715.1. Definitions

As used in this article:

"Merger" means a business combination pursuant to § 13.1-716.

"Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or eligible entity that will:

1. Merge under a plan of merger;

2. Acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a share exchange; or

3. Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

"Share exchange" means a business combination pursuant to § 13.1-717.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

2005, c. 765.

§ 13.1-716. Merger

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic or foreign corporation or eligible entity to be created in the merger. When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5, a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is

permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign corporation or nonstock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a party to the merger are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is approved by the shareholders:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 13.1-706; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

F.1. One or more domestic corporations may merge pursuant to this section into another domestic corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them.

2. Any corporation authorized by its articles of incorporation to engage in a special kind of business enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of incorporation to engage in the same special kind of business, including mergers authorized under § 6.2-1146, whether or not either or both of such corporations are actually engaged in the transaction of such business, and the shareholders of the corporations parties to the merger may receive shares of a corporation not authorized by its articles of incorporation to engage in such special kind of business.

Code 1950, § 13.1-68; 1956, c. 428; 1968, c. 111; 1973, c. 441; 1975, c. 500; 1980, c. 90; 1985, c. 522; 1991, c. 228; 2005, c. 765; 2006, c. 663; 2008, c. 509; 2009, c. 216; 2015, c. 611.

§ 13.1-717. Share exchange

A. Through a share exchange:

1. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the eligible interests of one or more classes or series of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such shares or eligible interests, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange; or

2. All of the shares of one or more classes or series of shares of a domestic corporation, as well as rights to acquire any such shares or eligible interests, may be acquired by another domestic or foreign corporation or other eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange.

B. A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed.

C. If the organic law of a domestic eligible entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger.

D. The plan of share exchange shall include:

1. The name of each domestic or foreign corporation or eligible entity whose shares or eligible interests will be acquired and the name of the domestic or foreign corporation or other eligible entity that will acquire those shares or eligible interests;

2. The terms and conditions of the share exchange;

3. The manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing;

4. The manner and basis for exchanging any rights to acquire shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing; and

5. Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

E. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

F. The plan of share exchange may also include a provision that the plan may be amended prior to the effective date of the certificate of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is approved by the shareholders:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing to be issued by the corporation or to be received under the plan by the shareholders of or owners of eligible interests in any party to the share exchange; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

G. This section does not limit the power of a domestic corporation to acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than a share exchange.

Code 1950, § 13.1-69.1; 1975, c. 500; 1980, c. 90; 1985, c. 522; 2005, c. 765; 2015, c. 611.

§ 13.1-718. Action on a plan of merger or share exchange

A. In the case of a domestic corporation that is a party to a merger or share exchange:

1. The plan of merger or share exchange shall be adopted by the board of directors.

2. Except as provided in subsections F and H and in §§ 13.1-719 and 13.1-719.1, after adopting the plan of merger or share exchange the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

B. The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B, require a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. Except as otherwise provided in the articles of incorporation, on a plan of merger by each class or series of shares that:

a. Is to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing, or is proposed to be eliminated without being converted into any of the foregoing; or

b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § 13.1-708;

2. Except as otherwise provided in the articles of incorporation, on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group;

3. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger; and

4. On a plan of share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of share exchange.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

2. Except for amendments permitted by § 13.1-706, its articles of incorporation will not be changed;

3. Each shareholder of the corporation whose shares were outstanding immediately before the effective time of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and rights immediately after the effective time of the merger or share exchange; and

4. With respect to shares of the surviving corporation in a merger that are entitled to vote unconditionally in the election of directors, the number of shares outstanding immediately after the merger, plus the number of shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of shares of the surviving corporation outstanding immediately before the merger.

G. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation is a public corporation;

2. The plan of merger or share exchange expressly (i) permits or requires such a merger or share exchange to be effected under this subsection and (ii) provides that such merger or share exchange be effected as soon as practicable following the consummation of the offer referred to in subdivision 3 if such merger or share exchange is effected under this subsection;

3. A corporation or limited liability company irrevocably accepts for payment shares tendered pursuant to a tender or exchange offer for any and all of the outstanding shares of a constituent corporation, as defined in § 13.1-719.1, on the terms provided in such plan of merger or share

exchange that, absent this subsection, would be entitled to vote on the adoption of the plan of merger or share exchange; however, the offer may exclude shares of the constituent corporation that are owned at the commencement of the offer by:

a. The corporation or limited liability company making the offer;

b. Any person that owns, directly or indirectly, all of the outstanding shares or eligible interests of the corporation or limited liability company making the offer; or

c. Any direct or indirect wholly-owned subsidiary of any corporation or limited liability company described in subdivision a or person described in subdivision b;

4. Following the acceptance of shares referred to in this subsection, the shares irrevocably accepted for payment pursuant to the offer and received by the depository prior to expiration of the offer, plus the shares otherwise owned by the corporation or limited liability company consummating the offer, equals at least the percentage of the shares, and of each class or series thereof, that, absent this subsection, would be required to adopt a plan of merger or share exchange under this chapter and by the articles of incorporation of the constituent corporation;

5. The corporation or limited liability company accepting the shares referred to in subdivision 3 merges with or into the constituent corporation or acquires all of the outstanding shares of the constituent corporation pursuant to the plan; and

6. Each outstanding share of each class or series of stock of the constituent corporation that is the subject of, and is not irrevocably accepted for payment in, the offer referred to in subdivision 3 is either:

a. To be converted in such merger into, or into the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer; or

b. Exchanged in such share exchange for, or for the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer.

As used in this subsection:

"Depository" means an agent appointed in connection with an offer referred to in subdivision 3 by the corporation or limited liability company consummating the offer.

"Person" means any individual, corporation, partnership, limited liability company, unincorporated association, or other entity.

"Received" means (i) with respect to certificated shares, the physical receipt of a stock certificate and (ii) with respect to uncertificated shares, (a) the transfer into the depository's account or (b) the receipt by the depository of an agent's message.

H. If a corporation has not yet issued shares and its articles of incorporation do not otherwise provide, its board of directors may adopt and approve a plan of merger or share exchange on behalf of the corporation without shareholder action.

I. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

Code 1950, § 13.1-70; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1991, c. 109; 2005, c. 765; 2006, cc. 363, 663; 2007, c. 165; 2010, c. 782; 2015, c. 611.

§ 13.1-719. Merger between parent and subsidiary or between subsidiaries

A. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

B. A foreign parent corporation that owns shares of a domestic subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another domestic or foreign subsidiary, or merge itself into the subsidiary if permitted by the laws under which any such foreign parent or subsidiary corporation is organized or by which it is governed, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations, or in the case of a foreign corporation, its equivalent governing document, otherwise provide. A foreign corporation may be a party to a merger pursuant to this subsection only if the merger is permitted by the laws under which the foreign corporation is organized.

C. If under subsection A or B approval of the merger by the subsidiary's shareholders is not required, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

D. Except as provided in subsections A, B, and C, a merger between a parent and a subsidiary shall be governed by the provisions of this article applicable to mergers generally.

E. The articles of incorporation of the survivor shall not be altered or amended by a merger pursuant to this section, except for amendments permitted by § 13.1-706.

F. Two or more subsidiaries may be merged into a parent corporation pursuant to this section.

Code 1950, § 13.1-76; 1956, c. 428; 1964, c. 417; 1968, c. 115; 1975, c. 500; 1985, c. 522; 1990, c. 230; 2005, c. 765; 2015, c. 611.

§ 13.1-719.1. Formation of a holding company

A. As used in this section:

"Constituent corporation" means a corporation which, from the incorporation of the holding company until consummation of a merger governed by this section, was at all times the sole direct parent of the holding company and whose shares are converted into shares of the holding company in such merger.

"Holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct wholly owned subsidiary of the constituent corporation and whose shares are issued in such merger in exchange for the shares of the constituent corporation.

"Indirect subsidiary" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct wholly owned subsidiary of the holding company.

B. Unless its articles of incorporation otherwise provide, a constituent corporation may merge an indirect subsidiary into itself, or may merge itself into an indirect subsidiary, without the approval of the shareholders of the constituent corporation or the board of directors or shareholders of the indirect subsidiary, if:

1. Such constituent corporation and indirect subsidiary are the only parties to the merger;

2. The provisions in the articles of incorporation and bylaws of the constituent corporation and the holding company at the effective time of the merger are identical as they relate to:

a. The designation, number, and par value of each class and series of shares that are authorized, and the preferences, rights and limitations of each class and series of shares;

b. Any terms of the shares that are dependent upon facts objectively ascertainable outside of the articles of incorporation or that vary among the holders of the same class or series;

c. The preemptive right of the shareholders to acquire unissued shares, provided, however, that if the constituent corporation was formed on or before December 31, 2005, and its articles of incorporation do not deny the preemptive right of its shareholders, and the holding company was formed after December 31, 2005, the articles of incorporation of the holding company must provide that its shareholders have the preemptive right to acquire the holding company's unissued shares to the same extent the shareholders of the constituent corporation had a preemptive right to acquire unissued shares of the constituent corporation;

d. The definition, limitation, and regulation of the powers of the corporation, its directors, and shareholders;

e. The management of the business and regulation of the affairs of the corporation; and

f. For purposes of subdivision 2 c of this subsection, shares include any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares;

3. Each share or fraction of a share of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same preferences, rights, and limitations as the share or fraction of a share of the constituent corporation being converted in the merger;

4. Each right to acquire shares of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a right to acquire shares of the holding company having the same preferences, rights, and limitations as the right to acquire shares of the constituent corporation being converted in the merger; and

5. The directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger.

C. Notwithstanding any provision in this chapter to the contrary, a plan of merger adopted pursuant to this section may include:

1. If the indirect subsidiary is the survivor:

a. An amendment or restatement of the indirect subsidiary's articles of incorporation to change the name of the indirect subsidiary to a name that satisfies the requirements of this chapter; and

b. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the holding company adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger; and

2. If the constituent corporation is the survivor:

a. An amendment or restatement of the constituent corporation's articles of incorporation:

(1) To change the name of the constituent corporation to a name that satisfies the requirements of this chapter;

(2) To delete any existing provisions that authorize the issuance of or relate to multiple classes or series of shares and to add one or more provisions that authorize a new, single class of shares with unlimited voting rights in lieu thereof;

(3) To delete any existing provision that provides for staggering the terms of directors pursuant to § 13.1-678; or

(4) To make any change permitted by § 13.1-706;

b. A provision that one or more of the directors of the constituent corporation immediately prior to the effective time of the merger will no longer be directors of the constituent corporation immediately following the effective time of the merger; and

c. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the constituent corporation adopts a new name in the merger that is distinguishable upon the records of the Commission and if the board of directors of the holding company, acting pursuant to § 13.1-706, adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger.

D. Articles of merger filed with respect to a merger authorized by this section shall include a statement that the plan of merger did not require approval by the shareholders of the constituent corporation or by the board of directors or shareholders of the indirect subsidiary because the merger was authorized by this section and that the conditions specified in subsection B have been satisfied.

E. Except as provided in this section, a merger governed by this section shall comply with the provisions of this article applicable to mergers generally.

F. From and after the effective time of a merger adopted by a constituent corporation pursuant to this section:

1. To the extent the restrictions of § 13.1-725.1 or § 13.1-728.2 applied to the constituent corporation and its shareholders immediately prior to the merger, such restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of the holding company acquired in the merger shall for purposes of §§ 13.1-725.1 and 13.1-728.2 be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired, and provided further that:

a. Any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of § 13.1-725 shall not solely by reason of the merger become an interested shareholder of the holding company; and

b. Any shares which immediately prior to the effective time of the merger were not interested shares within the meaning of § 13.1-728.1 shall not solely by reason of the merger become interested shares of the holding company; and

2. To the extent a shareholder of the constituent corporation immediately prior to the effective time of the merger had standing to institute or maintain a derivative proceeding on behalf of the constituent corporation, consummation of the merger shall not be deemed to limit or extinguish such standing.

3. To the extent a voting trust authorized by § 13.1-670, a voting agreement authorized by § 13.1-671, a shareholder agreement authorized by § 13.1-671.1, a proxy or any similar agreement or instrument applied to the constituent corporation, its shares or its shareholders immediately prior to the merger, such voting trust, voting agreement, shareholder agreement, proxy or other agreement or instrument shall apply to the holding company and its shares and shareholders immediately following consummation of the merger to the same extent that it applied to the constituent corporation and its shares and shareholders immediately prior to consummation of the merger.

2006, c. 363; 2015, c. 611.

§ 13.1-720. Articles of merger or share exchange

A. After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange. The articles shall set forth:

1. The plan of merger or share exchange, the names of the parties to the merger or share exchange and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;

2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

3. The date the plan of merger or share exchange was adopted by each domestic corporation that was a party to the merger or share exchange;

4. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, either:

a. A statement that the plan was approved by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

5. If the plan of merger or share exchange was adopted by the directors without approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a

statement that the plan of merger or share exchange was duly approved by the directors including the reason shareholder approval was not required and, in the case of a merger pursuant to § 13.1-719.1, the additional statements required by subsection D of § 13.1-719.1; and

6. As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger or share exchange shall be filed with the Commission by the survivor of the merger or the acquiring corporation in a share exchange. If the Commission finds that the articles of merger or share exchange comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger or share exchange. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

C. In the case of a merger pursuant to § 13.1-719 or § 13.1-719.1:

1. The articles shall recite that the merger is being effected pursuant to § 13.1-719 or § 13.1-719.1, as the case may be; and

2. The articles need only be signed on behalf of the parent corporation or the constituent corporation, as the case may be.

Code 1950, §§ 13.1-72, 13.1-73; 1956, c. 428; 1968, c. 114; 1975, c. 500; 1985, c. 522; 1992, c. 575; 2000, c. 53; 2003, c. 597; 2005, c. 765; 2006, c. 363; 2009, c. 216; 2010, c. 782; 2015, c. 611.

§ 13.1-721. Effect of merger or share exchange

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;

2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;

3. Property owned by, and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by, each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

4. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;

5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

6. The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;

7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and

8. The shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to the merger, that are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Article 15 (§ 13.1-729 et seq.) of this chapter or the organic law of the eligible entity.

B. When a share exchange becomes effective, the shares of each domestic or foreign corporation that are to be exchanged for shares and other securities, eligible interests, obligations, rights to acquire shares, other securities, eligible interests, cash, other property or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Article 15 (§ 13.1-729 et seq.) of this chapter.

C. Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to:

1. Appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

2. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 15 (§ 13.1-729 et seq.) of this chapter.

D. No corporation that is required by law to be a domestic corporation, may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States or another country, shall also be a domestic corporation of the Commonwealth.

Code 1950, § 13.1-74; 1956, c. 428; 1962, c. 44; 1975, c. 500; 1985, c. 522; 2005, c. 765.

§ 13.1-721.1. Abandonment of a merger or share exchange

A. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger or share exchange has become effective, it may be abandoned by a domestic corporation that is a party thereto without action by shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the

board of directors, subject to any contractual rights of other parties to the merger or share exchange.

B. If a merger or share exchange is abandoned under subsection A after articles of merger or share exchange have been filed with the Commission but before the certificate of merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

2005, c. 765; 2010, c. 782.

§§ 13.1-722, 13.1-722.1. Repealed
Repealed by Acts 2005, c. 765, cl. 2.

Article 12.1 - DOMESTICATION

§ 13.1-722.2. Domestication
A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated;

2. The terms and conditions of the domestication, provided that such terms and conditions may not alter the designation, rights, preferences or limitations of all or part of the authorized shares except to the extent required to conform to the requirements of this chapter; and

3. For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § 13.1-619 as they will be in effect upon consummation of the domestication.

D. The plan of domestication may include any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document

required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the shareholders of the corporation shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation.

2001, c. 545; 2002, c. 1; 2012, c. 130.

§ 13.1-722.3. Action on plan of domestication by a domestic corporation

In the case of a domestic corporation:

A. The board of directors of the corporation shall adopt the plan of domestication.

B. After adopting the plan of domestication the board of directors shall submit the plan of domestication for approval by the shareholders.

C. For the plan of domestication to be approved:

1. The board of directors shall recommend the plan to the shareholders unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and

2. The shareholders shall approve the plan as provided in subsection F.

D. The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

E. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

F. Unless this chapter or the board of directors, acting pursuant to subsection D, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

2001, c. 545; 2002, c. 1.

§ 13.1-722.4. Articles of domestication

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-630;

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § 13.1-606.

D. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter.

E. If the foreign corporation is authorized to transact business in the Commonwealth under Article 17 (§ 13.1-757 et seq.), its certificate of authority shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

2001, c. 545; 2002, c. 1; 2012, c. 130.

§ 13.1-722.5. Surrender of articles of incorporation upon domestication

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;

2. The jurisdiction in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;

3. The plan of domestication;

4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of this Commonwealth;

5. A statement:

a. That the plan was adopted by the unanimous consent of the shareholders; or

b. That the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

6. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

7. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision 6; and

8. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-759 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.

2001, c. 545; 2002, c. 1; 2015, c. 623.

§ 13.1-722.6. Effect of domestication

A. When a foreign corporation's certificate of domestication in this Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;

2. The liabilities remain the liabilities of the corporation;

3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;

4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

a. Be incorporated under the laws of this Commonwealth for all purposes;

b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and

c. Have been incorporated on the date it was originally incorporated or organized.

B. Any shareholder of a foreign corporation that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

2001, c. 545; 2002, c. 1.

§ 13.1-722.7. Abandonment of domestication

A. Unless otherwise provided in a plan of domestication of a domestic corporation to become a foreign corporation, after the plan has been approved and adopted as required by this article, and at any time before the certificate of incorporation surrender has become effective, the domestication may be abandoned by the domestic corporation without action by the shareholders in accordance with any procedures set forth in the plan of domestication or, if no such procedures are set forth in the plan of domestication, in the manner determined by the board of directors.

B. If a domestication is abandoned under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective time and date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign corporation is incorporated after articles of domestication have been filed with the Commission but before the certificate of domestication

has become effective, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective time and date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

2001, c. 545; 2002, c. 1; 2015, c. 623.

Article 12.2 - CONVERSION

§ 13.1-722.8. Definitions

As used in this article, unless the context requires a different meaning :

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § 13.1-603.

"Limited liability company" has the same meaning specified in § 13.1-1002.

"Member" has the same meaning specified in § 13.1-1002.

"Membership interest" or "interest" has the same meaning specified in § 13.1-1002.

"Resulting entity" means the limited liability company that is in existence upon consummation of an entity conversion pursuant to this article.

2001, c. 545; 2002, c. 1; 2016, c. 288.

§ 13.1-722.9. Entity conversion

A. A domestic corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article.

B. A domestic limited liability company may become a domestic corporation pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

2001, c. 545; 2002, c. 1; 2016, c. 288.

§ 13.1-722.10. Plan of entity conversion

A. To become a domestic limited liability company, a domestic corporation shall adopt a plan of entity conversion setting forth:

1. A statement of the corporation's intention to convert to a limited liability company;

2. The terms and conditions of the conversion, including the manner and basis of converting the shares of the corporation into interests of the resulting entity preserving the ownership proportion and relative rights, preferences, and limitations of each such share;

3. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and

4. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the shareholders shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the converting entity, unless the amendment has been approved by the shareholders in the manner set forth in § 13.1-722.11.

2001, c. 545; 2002, c. 1; 2003, c. 598; 2016, c. 288.

§ 13.1-722.11. Action on plan of entity conversion

A. Except as provided in subsection B, the plan of entity conversion shall be adopted by the corporation in the following manner:

1. The board of directors shall adopt the plan of entity conversion.

2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan of entity conversion, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan.

3. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

5. Unless this chapter or the board of directors, acting pursuant to subdivision 3, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. If a corporation has not yet issued shares, a majority of its initial board of directors or incorporators, in the event that there is no board of directors, may adopt the plan of entity conversion.

2001, c. 545; 2002, c. 1; 2012, c. 130; 2016, c. 288.

§ 13.1-722.12. Articles of entity conversion

A. After the plan of entity conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which name shall satisfy the requirements of the laws of this Commonwealth;

2. The date on which the corporation was originally incorporated, organized, or formed; its original name, entity type, and jurisdiction of incorporation, organization, or formation; and, for each subsequent change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved;

5. If the plan of entity conversion was adopted by the board of directors or the incorporators without shareholder approval, a statement that the plan was duly approved by the board of directors or by a majority of the incorporators, as the case may be, including the reason shareholder and, if applicable, director approval was not required; and

6. If the plan of entity conversion was approved by the shareholders, either:

a. A statement that the plan was adopted by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2001, c. 545; 2002, c. 1; 2003, c. 598; 2015, c. 623; 2016, c. 288.

§ 13.1-722.13. Effect of entity conversion

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities remain the liabilities of the resulting entity;

3. A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur;

4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

5. The shares of the converting entity are reclassified into interests in accordance with the plan of entity conversion; and the shareholders of the converting entity are entitled only to the rights provided in the plan of entity conversion or to the rights, if any, they may have under subdivision A 5 of § 13.1-730;

6. The resulting entity is deemed to:

a. Be a limited liability company for all purposes;

b. Be the same entity without interruption as the converting entity that existed before the conversion;

c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed; and

7. The converting entity shall cease to be a corporation when the certificate of entity conversion becomes effective.

B. Any shareholder of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2001, c. 545; 2002, c. 1; 2005, c. 765; 2015, c. 623; 2016, c. 288.

§ 13.1-722.14. Abandonment of entity conversion

A. Unless otherwise provided in a plan of entity conversion of a domestic corporation to become a domestic limited liability company, after the plan has been approved and adopted as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the corporation without action by the shareholders in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section

shall be delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2001, c. 545; 2002, c. 1; 2015, c. 623; 2016, c. 288.

Article 13 - DISPOSITION OF ASSETS

§ 13.1-723. Disposition of assets not requiring shareholder approval

Unless the articles of incorporation otherwise provide, no approval of the shareholders of a corporation is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

2. To mortgage, pledge or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

3. To transfer any or all of the corporation's assets to one or more domestic or foreign corporations or eligible entities all the shares or eligible interests of which are owned by the corporation; or

4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Code 1950, §§ 13-83, 13-84, 13.1-77; 1954, c. 499; 1956, c. 428; 1968, c. 109; 1971, Ex. Sess., c. 117; 1975, c. 500; 1985, c. 522; 1994, c. 710; 2003, c. 728; 2005, c. 765.

§ 13.1-724. Shareholder approval of certain dispositions

A. A sale, lease, exchange or other disposition of the corporation's assets, other than a disposition described in § 13.1-723, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. Unless the articles of incorporation or a shareholder-approved bylaw otherwise provide, if a corporation retains a business activity that represented at least 20 percent of total assets at the end of the most recently completed fiscal year, and 20 percent of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and any of its subsidiaries that are consolidated for purposes of federal income taxes, the corporation will conclusively be deemed to have retained a significant continuing business activity.

B. A disposition that requires approval of the shareholders under subsection A shall be initiated by adoption of a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also submit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not

make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

C. The board of directors may condition its submission of the proposed disposition on any basis.

D. If a disposition is required to be approved by shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the disposition will be effected. If only a summary of the agreement is sent to shareholders, the corporation also shall send a copy of the agreement to any shareholder who requests it.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, the disposition to be authorized shall be approved by the holders of more than two-thirds of all the votes entitled to be cast on the disposition. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

F. Unless the parties to the disposition have agreed otherwise, after a disposition has been approved by shareholders, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the resolution proposing the disposition or, if none is set forth, by the board of directors.

G. A disposition of assets in the course of dissolution under Article 16 (§ 13.1-742 et seq.) is not governed by this section.

H. The assets of a consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

I. Notwithstanding any other provision of this section, no corporation organized to conduct the business of a railroad or other public service or a banking business, or a savings institution, an industrial loan association or a credit union may sell, lease or exchange its properties for the conduct of such business in the Commonwealth except to a corporation of the Commonwealth organized for the same purpose or in the case of a bank to a savings and loan association or a corporation of the United States, and in the case of a savings and loan association to a bank or a corporation of the United States.

Code 1950, §§ 13-83, 13-84, 13.1-77; 1954, c. 499; 1956, c. 428; 1968, c. 109; 1971, Ex. Sess., c. 117; 1975, c. 500; 1985, c. 522; 1987, c. 181; 1996, c. 77; 2005, c. 765.

Article 14 - AFFILIATED TRANSACTIONS

§ 13.1-725. Definitions

For purposes of this article:

An "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

An "affiliated transaction" means any of the following transactions:

1. Any merger of the corporation or any of its subsidiaries with any interested shareholder or with any other corporation that immediately after the merger would be an affiliate of an interested shareholder that was an interested shareholder immediately before the merger;

2. Any share exchange pursuant to § 13.1-717 in which any interested shareholder acquires one or more classes or series of voting shares of the corporation or any of its subsidiaries;

3. Except for transactions in the ordinary course of business, (i) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any interested shareholder of any assets of the corporation or of any of its subsidiaries having an aggregate fair market value in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements, or (ii) any guaranty by the corporation or any of its subsidiaries (in one transaction or a series of transactions) of indebtedness of any interested shareholder in an amount in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements;

4. The sale or other disposition by the corporation or any of its subsidiaries to an interested shareholder (in one transaction or a series of transactions) of any voting shares of the corporation or any of its subsidiaries having an aggregate market value in excess of five percent of the aggregate market value of all outstanding voting shares of the corporation except pursuant to a share dividend or the exercise of rights or warrants distributed or offered on a basis affording substantially proportionate treatment to all holders of the same class or series of voting shares;

5. The dissolution of the corporation if proposed by or on behalf of an interested shareholder; or

6. Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger of the corporation with any of its subsidiaries or any distribution or other transaction, whether or not with or into or otherwise involving an interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions), of increasing by more than five percent the percentage of the outstanding voting shares of the corporation or any of its subsidiaries beneficially owned by any interested shareholder.

The "announcement date" means the date of the first general public announcement of the proposed affiliated transaction or of the intention to propose an affiliated transaction or the date on which the proposed affiliated transaction or the intention to propose an affiliated transaction is first communicated generally to shareholders of the corporation, whichever is earlier.

An "associate" means as to any specified person:

1. Any entity, other than the corporation and any of its subsidiaries, of which such person is an officer, director, manager, or general partner or is the beneficial owner of 10 percent or more of any class of voting shares or other interests;

2. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

3. Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is an officer or director of the corporation or any of its affiliates.

A person is deemed to be a "beneficial owner" of voting shares as to which such person and such person's affiliates and associates, individually or in the aggregate, have or share directly, or indirectly through any contract, arrangement, understanding, relationship, or otherwise:

1. Voting power, which includes the power to vote or to direct the voting of the voting shares, unless such power results solely from a revocable proxy given in response to a proxy solicitation made to 10 or more persons and in accordance with the Securities Exchange Act of 1934;

2. Investment power, which includes the power to dispose or to direct the disposition of the voting shares; or

3. The right to acquire voting power or investment power, whether such right is exercisable immediately or only after the passage of time, pursuant to any contract, arrangement, or understanding, upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, that (i) a person shall not be deemed to be a beneficial owner of voting shares tendered pursuant to a tender or exchange offer made by such person or such person's affiliates or associates until such tendered voting shares are accepted for purchase or exchange, (ii) a member of a national securities exchange shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange may direct the vote of such shares, without instructions, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the shares to be voted but is otherwise precluded by the rules of such exchange from voting without instructions and (iii) a director of the corporation shall not be deemed to be a beneficial owner of voting shares beneficially owned by another director of the corporation solely by reason of actions undertaken by such persons in their capacity as directors of the corporation.

"Control" means the possession, directly or indirectly, through the ownership of voting securities, by contract, arrangement, understanding, relationship or otherwise, of the power to direct or cause the direction of the management and policies of a person. The beneficial ownership of 10 percent or more of a corporation's voting shares shall be deemed to constitute control.

The "determination date" means the date on which an interested shareholder became an interested shareholder.

Unless otherwise specified in the articles of incorporation initially filed with the Commission, for purposes of this article a "disinterested director" means as to any particular interested shareholder (i) any member of the board of directors of the corporation who was a member of the board of directors before the later of January 1, 1988, and the determination date and (ii) any member of the board of directors of the corporation who was recommended for election by, or was elected to fill a vacancy and received the affirmative vote of, a majority of the disinterested directors then on the board.

"Fair market value" means:

1. In the case of shares, the highest closing sale price of a share quoted during the 30-day period immediately preceding the date in question on the composite tape for shares listed on the New York Stock Exchange, or, if such shares are not quoted on the composite tape on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such shares are listed, or, if such shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., automated quotations system or any similar system then in general use, or, if no such quotations are available, the fair market value of a share on the date in question as determined by a majority of the disinterested directors; and

2. In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the disinterested directors.

An "interested shareholder" means any person that is:

1. The beneficial owner of more than 10 percent of any class of the outstanding voting shares of the corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or

2. An affiliate or associate of the corporation and at any time within the preceding three years was an interested shareholder of such corporation.

"Valuation date" means, if the affiliated transaction is voted upon by shareholders, the day before the date of the vote of shareholders or, if the affiliated transaction is not voted upon by shareholders, the date of the consummation of the transaction.

"Voting shares" means the outstanding shares of all classes or series of the corporation entitled to vote generally in the election of directors.

1985, c. 522; 1988, c. 442; 2005, c. 765; 2010, c. 782.

§ 13.1-725.1. Affiliated transactions

Notwithstanding any provision to the contrary contained in this chapter, except as provided in subsection B of § 13.1-727, no corporation shall engage in any affiliated transaction with any interested shareholder for a period of three years following such interested shareholder's determination date unless approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder. A corporation may engage in an affiliated transaction with an interested shareholder beginning three years after such interested shareholder's determination date, provided such transaction complies with the provisions of § 13.1-726.

1988, c. 442.

§ 13.1-726. Voting requirements for affiliated transactions

Except as provided in § 13.1-727 and notwithstanding the provisions of subsection A of § 13.1-638, in addition to any affirmative vote required by any other section of this Act or by the articles of incorporation, an affiliated transaction shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder.

1985, c. 522; 1988, c. 442.

§ 13.1-726.1. Determination by disinterested directors

A majority of the disinterested directors shall have the power to determine for the purposes of this article:

1. Whether a person is an interested shareholder;

2. The number of voting shares beneficially owned by any person;

3. Whether a person is an affiliate or associate of another;

4. Whether the securities to be issued or transferred by the corporation or any of its subsidiaries to any interested shareholder have an aggregate fair market value equal to or greater than five percent of the aggregate fair market value of all of the outstanding voting shares of the corporation or any of its subsidiaries as of the determination date; and

5. Whether the assets or amount of indebtedness guaranteed that may be the subject of any affiliated transaction constitutes more than five percent of the consolidated net worth of the corporation.

1988, c. 442.

§ 13.1-727. Exceptions

A. The voting requirements set forth in § 13.1-726 do not apply to a particular affiliated transaction if the conditions specified in either of the following subdivisions are met:

1. The affiliated transaction has been approved by a majority of the disinterested directors; or

2. In the affiliated transaction consideration will be paid to the holders of each class or series of voting shares and the following conditions will be met:

a. The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or series of voting shares in such affiliated transaction is at least equal to the highest of the following:

(1) If applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it (i) within the two-year period immediately preceding the determination date or (ii) in the transaction in which it became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid, being the "share acquisition date," through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the share acquisition date, up to the amount of such interest;

(2) The fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher being the "measuring date," plus, in either case, interest compounded annually from the measuring date through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the measuring date, up to the amount of such interest;

(3) If applicable, the price per share equal to the per share amount determined pursuant to subdivision 2 a (2) of this subsection, multiplied by the ratio of (i) the highest per share price including any brokerage commissions, transfer taxes and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it within the two-year period immediately preceding the determination date to (ii) the fair market value per share of such class or

series on the first day in such two-year period on which the interested shareholder acquired any shares of such class or series; and

(4) If applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the corporation;

b. The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series and if the interested shareholder has paid for shares with varying forms of consideration, the form of the consideration will be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder;

c. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors:

(1) There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the corporation;

(2) There shall have been (i) no reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series, and (ii) an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction that has the effect of reducing the number of outstanding shares of the class or series; and

(3) Such interested shareholder shall not have become the beneficial owner of any additional voting shares except as part of the transaction that results in such interested shareholder becoming an interested shareholder;

d. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise; and

e. Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement describing the affiliated transaction and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules, or regulations) is mailed to holders of voting shares of the corporation at least 25 days before the consummation of such affiliated transaction, whether or not

such proxy or information statement is required to be mailed pursuant to such Act, rules, regulations, or subsequent provisions.

B. The provisions of this article do not apply to a particular affiliated transaction if the conditions specified in any one of the following subdivisions are met:

1. The affiliated transaction is with (i) an interested shareholder who has been an interested shareholder continuously or who would have been such but for the unilateral action of the corporation since the latest of (a) January 26, 1988, (b) the date the corporation first became subject to this article by virtue of its having 300 shareholders of record, or (c) the date such person became an interested shareholder with the prior or contemporaneous approval of a majority of the disinterested directors, (ii) any person who becomes an interested shareholder as a result of acquiring shares from a person specified in (i) of this subdivision by gift, testamentary bequest or the laws of descent and distribution or in a transaction in which consideration was not exchanged and who continues thereafter to be an interested shareholder, or who would have so continued but for the unilateral action of the corporation, (iii) a person who became an interested shareholder inadvertently or as a result of the unilateral action of the corporation and who, as soon as practicable thereafter, divested beneficial ownership of sufficient shares so that such person ceased to be an interested shareholder, and who would not, at any time within the three-year period immediately preceding the announcement date have been an interested shareholder but for such inadvertency or the unilateral action of the corporation, or (iv) an interested shareholder whose acquisition of voting shares making such person an interested shareholder was approved by a majority of the disinterested directors prior to such shareholder's determination date.

2. The corporation does not have more than 300 shareholders of record, unless the foregoing results from action taken by or on behalf of an interested shareholder or a transaction in which a person becomes an interested shareholder.

3. The corporation is an investment company registered under the Investment Company Act of 1940.

4. The corporation's articles of incorporation initially filed with the Commission expressly provide that the corporation shall not be governed by this article.

5. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this article, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws shall be approved by the affirmative vote of a majority of the shares entitled to vote that are not owned by an interested shareholder. An amendment adopted pursuant to this subdivision shall not be effective until 18 months after the date such amendment was approved by the shareholders and shall not apply to any affiliated transaction between such corporation and any person who became an interested shareholder of such corporation on or prior to the date of such amendment. A bylaw amendment adopted pursuant to this subdivision shall not be further amended by the board of

directors. In the event the articles of incorporation or bylaws are subsequently amended to eliminate a prior amendment electing not to be governed by this article, such subsequent amendment shall not restrict an affiliated transaction between the corporation and any person who became an interested shareholder at a time after such prior amendment became effective and who continued to be an interested shareholder immediately before and immediately after the adoption of such subsequent amendment, provided such person thereafter remains an interested shareholder continuously, or would have so remained but for the unilateral action of the corporation.

1985, c. 522; 1988, c. 442; 2005, c. 765.

§ 13.1-727.1. Nonexclusivity

Except as expressly provided in this article, the provisions of this article shall not limit actions that may be taken, or require the taking of any action, by the board of directors or shareholders with respect to any potential change in control of the corporation. With respect to any action or any failure to act by the board of directors, the provisions of § 13.1-690 shall apply. In determining the best interests of the corporation, a director may consider the possibility that those interests may best be served by the continued independence of the corporation.

1988, c. 442.

§ 13.1-728. Repealed

Repealed by Acts 1988, c. 442.

Article 14.1 - CONTROL SHARE ACQUISITIONS

§ 13.1-728.1. Definitions

As used in this article:

"Acquiring person," with respect to any public corporation, means any person who has made or proposes to make a control share acquisition of shares of such public corporation.

"Beneficial ownership" means the sole or shared power to dispose or direct the disposition of shares, or the sole or shared power to vote or direct the voting of shares, or the sole or shared power to acquire shares, including any such power which is not immediately exercisable, whether such power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise. A person shall not be deemed to be a beneficial owner of shares tendered pursuant to a tender or exchange offer made by such person until the tendered shares are accepted for purchase or exchange. A person shall not be deemed to be a beneficial owner of shares as to which such person may exercise voting power solely by virtue of a revocable proxy conferring the right to vote. A member of a national securities exchange shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such shares, without instructions, on other than contested matters or matters that may

affect substantially the rights or privileges of the holders of the shares to be voted but is otherwise precluded by the rules of such exchange from voting without instructions.

"Control share acquisition" means the direct or indirect acquisition, other than in an excepted acquisition, by any person of beneficial ownership of shares of a public corporation that, except for this article, would have voting rights and would, when added to all other shares of such public corporation which then have voting rights and are beneficially owned by such person, would cause such person to become entitled, immediately upon acquisition of such shares, to vote or direct the vote of, shares having voting power within any of the following ranges of the votes entitled to be cast in an election of directors: (i) one-fifth or more but less than one-third of such votes; (ii) one-third or more but less than a majority of such votes; or (iii) a majority or more of such votes. If voting rights are granted pursuant to this article in respect of any such range to shares so acquired by any person, any acquisition by such person of additional shares shall not, for purposes of the preceding sentence, constitute a control share acquisition unless, as a result of such acquisition, the voting power of the shares beneficially owned by such person would be in excess of such range in respect of which voting rights had previously been granted. If this article applies to acquisitions of shares of a public corporation at the time of a control share acquisition of any shares of such corporation, then shares acquired by the same person within 90 days before or after such control share acquisition and shares acquired by the same person pursuant to a plan to make a control share acquisition are deemed to have been acquired in the same control share acquisition for the purposes of this article, regardless of the applicability of this article at the time of any other acquisitions of shares during such periods or pursuant to such a plan.

"Excepted acquisition" means the acquisition of shares of a public corporation in any of the following circumstances:

1. Before January 26, 1988;

2. Pursuant to a binding contract in effect before January 26, 1988;

3. Pursuant to the laws of wills and decedents' estates;

4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this article;

5. Pursuant to a merger or plan of share exchange effected in compliance with Article 12 (§ 13.1-715.1 et seq.) of this chapter if the public corporation is a party to the agreement of merger or plan of share exchange;

6. Pursuant to a tender or exchange offer that is made pursuant to an agreement to which the public corporation is a party;

7. Directly from the public corporation, or from any of its wholly owned subsidiaries, or from any corporation having beneficial ownership of shares of the public corporation having at least a major-

ity, before such transaction, of the votes entitled to be cast in the election of directors of such public corporation; or

8. In good faith and not for the purpose of circumventing this chapter by or from any person (a "transferor") whose voting rights had previously been authorized by shareholders in compliance with this article, or whose previous acquisition of beneficial ownership of shares would have constituted a control share acquisition but for any of subdivisions 1 through 7 in this definition; however, any acquisition described in this subdivision 8 shall constitute a control share acquisition if as a result thereof any person acquires beneficial ownership of shares of such issuing public corporation having voting power in the election of directors in excess of the range of votes within which the transferor was authorized by this article to exercise voting power immediately before such acquisition.

"Interested shares" means the shares of a public corporation the voting of which in an election of directors may be exercised or directed by any of the following persons: (i) an acquiring person with respect to a control share acquisition; (ii) any officer of such public corporation; or (iii) any employee of such public corporation who is also a director of the corporation.

"Person" includes an associate of any person. For this purpose, "associate" shall mean (i) any other person who directly or indirectly controls, or is controlled by or under common control with, any such person or who is acting or intends to act jointly or in concert with any such person in connection with the acquisition of or exercise of beneficial ownership over shares; (ii) any corporation or organization of which any such person is an officer, director, manager or partner or as to which any such person performs a similar function; (iii) any other person having direct or indirect beneficial ownership of 10 percent or more of any class of equity securities of any such person; (iv) any trust or estate in which any such person has a beneficial interest or as to which any such person serves as trustee or in a similar fiduciary capacity; and (v) any relative or spouse of any such person, or any relative of such spouse, any one of whom has the same residence as any such person. For this purpose, "control" shall mean the possession, direct or indirect, of the power to direct or to cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, arrangement or understanding, or otherwise.

The "votes" entitled to be cast by any share shall, if any voting group is entitled to vote for less than the total number of directors to be elected at any election, be determined by multiplying the number of votes entitled to be cast by the holder of such share by the number of directors for whom such holder is entitled to vote; however, beneficial ownership of a majority of the shares comprising any such voting group shall be deemed to entitle such beneficial owner to cast all the votes of the shares in such voting group.

1989, c. 14; 1990, c. 252; 2005, c. 765.

§ 13.1-728.2. Application

Unless, at the time of any control share acquisition with respect to a public corporation, such corporation's articles of incorporation or bylaws provide that this article does not apply to acquisitions of shares of such corporation, shares of such corporation acquired in such control share acquisition have only such voting rights as are conferred by § 13.1-728.3. Unless by midnight of the fourth day following (i) the receipt by the secretary of the corporation at the principal office of the corporation, of a notice expressly and specifically describing a proposed control share acquisition, or (ii) in case the proposed control share acquisition is to be made by tender offer, a public announcement, the corporation's articles of incorporation or bylaws provide that this article does not apply, then the provisions of § 13.1-728.3 shall apply to shares to be acquired in such control share acquisition.

1989, c. 14; 1990, c. 252; 2005, c. 765.

§ 13.1-728.3. Voting rights

A. Notwithstanding any contrary provision of this chapter, shares acquired in a control share acquisition have no voting rights unless voting rights are granted by resolution adopted by the shareholders of the public corporation. If such a resolution is adopted, such shares shall thereafter have the voting rights they would have had in the absence of this article.

B. To be adopted under this section, the resolution shall be approved by a majority of all the votes which could be cast in a vote on the election of directors by all the outstanding shares other than interested shares. Interested shares shall not be entitled to vote on the matter, and in determining whether a quorum exists, all interested shares shall be disregarded. For the purpose of this subsection, the interested shares shall be determined as of the record date for determining the shareholders entitled to vote at the meeting.

C. If no resolution is adopted under this section in respect of shares acquired in a control share acquisition and beneficial ownership of such shares is subsequently transferred in circumstances where the transferor no longer has beneficial ownership of such shares and the transferee is not engaged in a control share acquisition, then such shares shall thereafter have the voting rights they would have had in the absence of this article.

1989, c. 14; 2005, c. 765.

§ 13.1-728.4. Control share acquisition statement

Any acquiring person may, after any control share acquisition or before any proposed one, deliver a control share acquisition statement to the public corporation at its principal office. The control share acquisition statement shall set forth all of the following:

1. The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining the shares owned or to be owned, beneficially, by the acquiring person.

2. A statement that the control share acquisition statement is given pursuant to this article.

3. The number of shares of the issuing public corporation beneficially owned by the acquiring person and each other member of the group.

4. The range of voting power under which the control share acquisition falls or would, if consummated, fall.

5. A description in reasonable detail of the terms of the control share acquisition or the proposed control share acquisition, including but not limited to:

a. The source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition;

b. Any plans or proposals of the acquiring person to liquidate the public corporation, to sell all or substantially all of its assets, to merge it or exchange its shares with any other person, to change the location of its principal executive office or a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relations with suppliers or customers or the communities in which it operates, or to make any other material change in its business, corporate structure, management or personnel;

c. Any plans or proposals of the acquiring person to acquire additional shares (including additional shares within the range set forth in the statement) or to dispose of any shares; and

d. Such other information which could reasonably be expected to affect materially the decision of a shareholder with respect to granting voting rights to shares acquired or proposed to be acquired in the control share acquisition.

6. If the control share acquisition has not taken place, representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition. For this purpose, financial capacity shall only be deemed to include (i) cash and cash equivalents in excess of normal working capital requirements and (ii) funds to be provided under legally binding commitments from financial institutions having the capability to advance such funds. If the funds to be provided under such commitments are included in the demonstration of financial capacity, the control share acquisition statement shall be accompanied by complete copies of all such commitments and a written description of all oral understandings concerning the terms and conditions of such commitments.

1989, c. 14; 2005, c. 765.

§ 13.1-728.5. Meeting of shareholders

A. If the acquiring person so requests at the time of delivery of a control share acquisition statement and gives an undertaking to pay the corporation's expenses of a special meeting, within 10 days thereafter the directors of the public corporation shall call a special meeting of shareholders

for the purpose of considering the voting rights to be granted the shares acquired or to be acquired in the control share acquisition.

B. Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the public corporation of the request.

C. If the acquiring person so requests in writing at the time of delivery of the control share acquisition statement, the special meeting shall not be held sooner than 30 days after receipt by the public corporation of the acquiring person's statement.

D. If the acquiring person makes no request under subsection A but delivers, no later than 30 days before the intended date of notice of an annual meeting of shareholders, a control share acquisition statement with respect to shares acquired in a control share acquisition, the voting rights to be granted such shares shall be considered by any such annual meeting.

E. Notwithstanding any contrary provision of this chapter, an appointment of a proxy that confers authority to vote on the granting of voting rights pursuant to this article shall be solicited separately from any offer to purchase, or from any solicitation of an offer to sell, shares of the public corporation, and may not be solicited sooner than 30 days before the meeting unless otherwise agreed to in writing by the acquiring person and the public corporation. No such appointment may be solicited or voted unless the appointment expressly provides that it is revocable at all times until the completion of the vote.

F. Notwithstanding subsection A, the directors of the public corporation may decline to call a special meeting of shareholders requested under such subsection if they determine that, at the time of such request, the acquiring person does not beneficially own shares having at least five percent of the votes entitled to be cast at an election of directors. If the directors so decline and if the control share acquisition statement accompanying such request was delivered no later than 30 days before the intended date of notice of an annual meeting of shareholders, the voting rights to be granted shares acquired or to be acquired in the control share acquisition described in the control share acquisition statement shall be considered at such annual meeting.

G. The control share acquisition statement required pursuant to subsections A, C, D and E shall be delivered under and meet the requirements of § 13.1-728.4.

1989, c. 14; 2005, c. 765.

§ 13.1-728.6. Notice to shareholders

A. If a special meeting of shareholders is required to be called pursuant to § 13.1-728.5, notice of the special meeting shall be given as promptly as reasonably practicable by the public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

B. Notice of the special or annual shareholders' meeting at which the voting rights are to be considered shall include or be accompanied by the following:

1. A copy of the control share acquisition statement delivered pursuant to this article.

2. A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the granting of voting rights to shares acquired in the control share acquisition or the proposed control share acquisition.

1989, c. 14; 2005, c. 765.

§ 13.1-728.7. Redemption

A. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, the shares acquired in such control share acquisition with respect to which no control share acquisition statement has been filed with the public corporation may, at any time during the period ending 60 days after the last acquisition of such shares by the acquiring person, be redeemed by the corporation at the redemption price specified in subsection C.

B. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, shares acquired in such control share acquisition with respect to which the shareholders have failed to grant voting rights at a special meeting or, if no special meeting for such purpose has been convened, at an annual meeting may, at any time during the period ending 60 days after such meeting, be redeemed by the corporation at the redemption price specified in subsection C.

C. The redemption price for shares to be redeemed under this section shall be the number of such shares multiplied by the dollar amount (rounded to the nearest cent) equal to the average per share price, including any brokerage commissions, transfer taxes and soliciting dealer's fees, paid by the acquiring person for such shares. The corporation may rely conclusively on public announcements by, or filings with the Securities and Exchange Commission by, the acquiring person as to the prices so paid.

1989, c. 14; 2005, c. 765.

§ 13.1-728.8. Appraisal rights

A. Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has beneficial ownership of shares entitled to cast a majority of the votes which could be cast in an election of directors, all shareholders of the public corporation other than the acquiring person have the right to appraisal rights and to obtain payment of the fair value of their shares under Article 15 (§ 13.1-729 et seq.) of this chapter as though such granting of voting rights were a corporate action described in subsection A of § 13.1-730, except that the provisions of subsection B of § 13.1-730 shall not be applicable and the failure to vote in favor of the granting of voting rights shall be deemed to constitute compliance with the requirements of subsection A of § 13.1-733.

B. For the purposes of this section, "fair value" shall in no event be less than the highest price per share paid in the control share acquisition, as adjusted for any subsequent share dividends or reverse share splits or similar changes.

1989, c. 14; 2005, c. 765.

§ 13.1-728.9. Nonexclusivity

Except as expressly provided in this article, neither the provisions of this article nor their application to any acquiring person shall limit actions that may be taken, or require the taking of any action, by the board of directors or shareholders with respect to any potential changes in control of any public corporation. In the case of any action taken or not taken by directors, the provisions of § 13.1-690 shall apply, and, in determining the best interests of the corporation, a director may consider the possibility that those interests may best be served by the continued independence of the corporation.

1989, c. 14; 2005, c. 765.

Article 15 - APPRAISAL RIGHTS AND OTHER REMEDIES

§ 13.1-729. Definitions

In this article:

"Affiliate" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive officer thereof.

"Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

"Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered by §§ 13.1-734 through 13.1-740, includes the surviving entity in a merger.

"Fair value" means the value of the corporation's shares determined:

a. Immediately before the effectuation of the corporate action to which the shareholder objects;

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision A 5 of § 13.1-730.

"Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

"Interested transaction" means a corporate action described in subsection A of § 13.1-730, other than a merger pursuant to § 13.1-719 or 13.1-719.1, involving an interested person in which any

of the shares or assets of the corporation are being acquired or converted. As used in this definition:

1. "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

2. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

a. Was the beneficial owner of 20% or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action;

b. Had the power, contractually or otherwise, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

c. Was a senior executive officer or director of the corporation or a senior executive officer of any affiliate thereof, and that senior executive officer or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in § 13.1-691; or

(3) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

"Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

"Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

"Senior executive officer" means the chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

"Shareholder" means both a record shareholder and a beneficial shareholder.

1985, c. 522; 1992, c. 575; 2005, c. 765; 2007, c. 165.

§ 13.1-730. Right to appraisal

A. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

1. Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by § 13.1-718, or would be required but for the provisions of subsection G of § 13.1-718; however, appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by § 13.1-719;

2. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

3. Consummation of a disposition of assets pursuant to § 13.1-724 if shareholder approval is required for the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if:

a. Under the terms of the corporate action approved by the shareholders there is to be distributed to the shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in § 13.1-746 or 13.1-746.1:

(1) Within one year after the shareholders' approval of the action; and

(2) In accordance with their respective interests determined at the time of distribution; and

b. The disposition of assets is not an interested transaction;

4. An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

5. Any other amendment to the articles of incorporation, or any other merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors; or

6. Consummation of a domestication in which a domestic corporation becomes a foreign corporation if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest in the total voting rights of the outstanding shares of the domestic corporation, as the shares held by the shareholder immediately before the domestication.

B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through A 4 shall be limited in accordance with the following provisions:

1. Appraisal rights shall not be available for the holders of shares of any class or series of shares that is:

a. A covered security under § 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended;

b. Traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares; or

c. Issued by an open end management investment company registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

2. The applicability of subdivision 1 shall be determined as of:

a. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

b. The day before the effective date of such corporate action if there is no meeting of shareholders.

3. Subdivision 1 shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision 1 at the time the corporate action becomes effective.

4. Subdivision 1 shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares where the corporate action is an interested transaction.

C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are

outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 1986, c. 540; 1988, c. 442; 1990, c. 229; 1992, c. 575; 1996, c. 246; 1999, c. 288; 2005, c. 765; 2007, c. 165; 2010, c. 782; 2015, c. 611.

§ 13.1-731. Assertion of rights by nominees and beneficial owners

A. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

B. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

1. Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision B 2 b of § 13.1-734; and

2. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765.

§ 13.1-732. Notice of appraisal rights

A. Where any corporate action specified in subsection A of § 13.1-730 is to be submitted to a vote at a shareholders' meeting and the corporation has concluded that shareholders are or may be entitled to assert appraisal rights under this article, the meeting notice shall state the corporation's position as to the availability of appraisal rights.

A copy of this article shall accompany the meeting notice sent to those record shareholders who are or may be entitled to exercise appraisal rights.

B. In a merger pursuant to § 13.1-719, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice shall be sent within 10 days after the corporate action became effective and include the materials described in § 13.1-734.

C. Where any corporate action specified in subsection A of § 13.1-730 is to be approved by written consent of the shareholders pursuant to § 13.1-657:

1. Written notice that appraisal rights are, are not, or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

2. Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by subsections F and G of § 13.1-657, may include the materials described in § 13.1-734, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

D. Where corporate action described in subsection A of § 13.1-730 is proposed, or a merger pursuant to § 13.1-719 is effected, the notice referred to in subsection A or C, if the corporation concludes that appraisal rights are or may be available, and in subsection B shall be accompanied by:

1. The annual financial statements specified in subsection A of § 13.1-774 of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16 months before the date of the notice and shall comply with subsection B of § 13.1-774; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

2. The latest available quarterly financial statements of such corporation, if any.

E. A public corporation, or a corporation that ceased to be a public corporation as a result of the corporate action specified in subsection A of § 13.1-730, may fulfill its responsibilities under subsection D by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the corporation was a public corporation as of the date of the specified financial statements.

F. The right to receive the information described in subsection D may be waived in writing by a shareholder before or after the corporate action.

1985, c. 522; 2005, c. 765; 2007, c. 165; 2012, c. 706; 2015, c. 611.

§ 13.1-733. Notice of intent to demand payment

A. If a corporate action specified in subsection A of § 13.1-730 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

1. Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

2. Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

B. If a corporate action specified in subsection A of § 13.1-730 is to be approved by shareholders by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

1. Shall deliver to the corporation before the proposed action becomes effective written notice of the shareholder's intent to demand payment if the proposed action is effectuated, except that such written notice is not required if the notice required by subsection C of § 13.1-732 is given less than 25 days prior to the date such proposed action is effectuated; and

2. Shall not sign a consent in favor of the proposed action with respect to that class or series of shares.

C. A shareholder who fails to satisfy the requirements of subsection A or B is not entitled to payment under this article.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765; 2007, c. 165; 2010, c. 782; 2015, c. 611.

§ 13.1-734. Appraisal notice and form

A. If proposed corporate action requiring appraisal rights under § 13.1-730 becomes effective, the corporation shall deliver an appraisal notice and the form required by subdivision B 1 to all shareholders who satisfied the requirements of § 13.1-733. In the case of a merger under § 13.1-719, the parent corporation shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

B. The appraisal notice shall be sent no earlier than the date the corporate action specified in subsection A of § 13.1-730 became effective and no later than 10 days after such date and shall:

1. Supply a form that (i) specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

2. State:

a. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision 2 b of this subsection;

b. A date by which the corporation must receive the form which date may not be fewer than 40 nor more than 60 days after the date the subsection A appraisal notice and form were sent, and state

that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

c. The corporation's estimate of the fair value of the shares;

d. That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subdivision 2 b of this subsection, the number of shareholders who returned the form by the specified date and the total number of shares owned by them; and

e. The date by which the notice to withdraw under § 13.1-735.1 must be received, which date must be within 20 days after the date specified in subdivision 2 b of this subsection; and

3. Be accompanied by a copy of this article.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765; 2007, c. 165; 2010, c. 782; 2012, c. 706.

§ 13.1-735. Repealed

Repealed by Acts 2005, c. 765, cl. 2.

§ 13.1-735.1. Perfection of rights; right to withdraw

A. A shareholder who receives notice pursuant to § 13.1-734 and who wishes to exercise appraisal rights must complete, sign, and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision B 2 b of § 13.1-734. If the form requires the shareholder to certify whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision B 1 of § 13.1-734, and the shareholder fails to make the certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 13.1-738. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed form, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection B.

B. A shareholder who has complied with subsection A may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision B 2 e of § 13.1-734. A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

C. A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection B of § 13.1-734, shall not be entitled to payment under this article.

2005, c. 765; 2007, c. 165.

§ 13.1-736. Repealed

Repealed by Acts 2005, c. 765, cl. 2.

§ 13.1-737. Payment

A. Except as provided in § 13.1-738, within 30 days after the form required by subsection B 2 b of § 13.1-734 is due, the corporation shall pay in cash to those shareholders who complied with subsection A of § 13.1-735.1 the amount the corporation estimates to be the fair value of their shares plus interest.

B. The payment to each shareholder pursuant to subsection A shall be accompanied by:

1. The (i) annual financial statements specified in subsection A of § 13.1-774 of the corporation that issued the shares to be appraised, which shall be as of a date ending not more than 16 months before the date of payment and shall comply with subsection B of § 13.1-774; provided that, if such annual financial statements are not available, the corporation shall provide reasonably equivalent information, and (ii) the latest available quarterly financial statements of such corporation, if any;

2. A statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate given pursuant to subdivision B 2 c of § 13.1-734; and

3. A statement that shareholders described in subsection A have the right to demand further payment under § 13.1-739 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

C. A public corporation, or a corporation that ceased to be a public corporation as a result of the corporate action specified in subsection A of § 13.1-730, may fulfill its responsibilities under subdivision B 1 by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the corporation was a public corporation as of the date of the specified financial statements.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765; 2007, c. 165; 2012, c. 706.

§ 13.1-738. After-acquired shares

A. A corporation may elect to withhold payment required by § 13.1-737 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision B 1 of § 13.1-734.

B. If the corporation elected to withhold payment under subsection A, it shall, within 30 days after the form required by subdivision B 2 b of § 13.1-734 is due, notify all shareholders who are described in subsection A:

1. Of the information required by subdivision B 1 of § 13.1-737;

2. Of the corporation's estimate of fair value pursuant to subdivision B 2 of § 13.1-737 and its offer to pay such value plus interest;

3. That they may accept the corporation's estimate of fair value plus interest in full satisfaction of their demands or demand for appraisal under § 13.1-739;

4. That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

5. That those shareholders who do not satisfy the requirements for demanding appraisal under § 13.1-739 shall be deemed to have accepted the corporation's offer.

C. Within 10 days after receiving a shareholder's acceptance pursuant to subsection B, the corporation shall pay in cash the amount it offered under subdivision B 2 to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

D. Within 40 days after sending the notice described in subsection B, the corporation shall pay in cash the amount it offered to pay under subdivision B 2 to each shareholder described in subdivision B 5.

1985, c. 522; 2005, c. 765; 2007, c. 165.

§ 13.1-739. Procedure if shareholder dissatisfied with payment or offer

A. A shareholder paid pursuant to § 13.1-737 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's stated estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment under § 13.1-737). A shareholder offered payment under § 13.1-738 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's estimate of the fair value of the shares plus interest.

B. A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection A within 30 days after receiving the corporation's payment or offer of payment under § 13.1-737 or 13.1-738, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765.

§ 13.1-740. Court action

A. If a shareholder makes a demand for payment under § 13.1-739 that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to § 13.1-737 plus interest.

B. The corporation shall commence the proceeding in the circuit court of the city or county where the corporation's principal office, or, if none in the Commonwealth, where its registered office, is located. If the corporation is a foreign corporation without a registered office in the Commonwealth, it shall commence the proceeding in the circuit court of the city or county in the Commonwealth where the principal office, or, if none in the Commonwealth, where the registered office of the domestic corporation merged with the foreign corporation was located at the time the transaction became effective.

C. The corporation shall make all shareholders, whether or not residents of the Commonwealth, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

D. The corporation may join as a party to the proceeding any shareholder who claims to have demanded an appraisal but who has not, in the opinion of the corporation, complied with the provisions of this article. If the court determines that a shareholder has not complied with the provisions of this article, that shareholder shall be dismissed as a party.

E. The jurisdiction of the court in which the proceeding is commenced under subsection B is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

F. Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares plus interest exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value plus interest of the shareholder's shares for which the corporation elected to withhold payment under § 13.1-738.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765.

§ 13.1-741. Court costs and counsel fees

A. The court in an appraisal proceeding commenced under § 13.1-740 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

B. The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

1. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of § 13.1-732, 13.1-734, 13.1-737 or 13.1-738; or

2. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

C. If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

D. To the extent the corporation fails to make a required payment pursuant to § 13.1-737, 13.1-738 or 13.1-739, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. 765.

§ 13.1-741.1. Limitations on other remedies for fundamental transactions

A. Except for action taken before the Commission pursuant to § 13.1-614 or as provided in subsection B, the legality of a proposed or completed corporate action described in subsection A of § 13.1-730 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

B. Subsection A does not apply to a corporate action that:

1. Was not authorized and approved in accordance with the applicable provisions of:

a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), or Article 13 (§ 13.1-723 et seq.);

b. The articles of incorporation or bylaws; or

c. The resolutions of the board of directors authorizing the corporate action;

2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

3. Is an interested transaction, unless it has been authorized, approved or ratified by the board of directors in the same manner as is provided in subsection B of § 13.1-691 and has been authorized, approved or ratified by the shareholders in the same manner as is provided in subsection C of § 13.1-691 as if the interested transaction were a director's conflict of interests transaction; or

4. Is adopted or taken by less than unanimous consent of the voting shareholders pursuant to § 13.1-657 if:

a. The challenge to the corporate action is brought by a shareholder who did not consent to the corporate action; and

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

C. Any remedial action with respect to corporate action described in subsection A of § 13.1-730 shall not limit the scope of, or be inconsistent with, any provision of § 13.1-614.

2007, c. 165; 2008, c. 91; 2015, c. 611.

Article 16 - DISSOLUTION

§ 13.1-742. Dissolution by directors and shareholders

A. A corporation's board of directors may propose dissolution for submission to the shareholders.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

2. The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection E.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, dissolution to be authorized must be approved by the holders of more than two-thirds of all votes entitled to be cast on the proposal to dissolve. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-81; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765.

§ 13.1-743. Articles of dissolution

A. At any time after dissolution is approved by the shareholders, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation;

2. The date dissolution was authorized;

3. Either (i) a statement that dissolution was authorized by unanimous consent of the shareholders, or (ii) a statement that the proposed dissolution was submitted to the shareholders by the board of directors in accordance with this article, and a statement of:

a. The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on dissolution; and

b. Either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all fees and taxes, and delinquencies thereof, imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ 13.1-742 through 13.1-746.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Code 1950, §§ 13.1-80 to 13.1-82, 13.1-87, 13.1-88, 13.1-90; 1956, c. 428; 1975, c. 500; 1985, cc. 522, 528; 2005, c. 765.

§ 13.1-744. Revocation of dissolution

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by filing with the Commission articles of revocation of dissolution that set forth:

1. The name of the corporation;

2. The effective date of the dissolution that was revoked;

3. The date that the revocation of dissolution was authorized;

4. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

5. If shareholder action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § 13.1-743.

D. If the Commission finds that the articles of revocation of dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if the dissolution had never occurred.

Code 1950, §§ 13.1-85, 13.1-86; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§ 13.1-745. Effect of dissolution

A. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

1. Collecting its assets;

2. Disposing of its properties that will not be distributed in kind to its shareholders;

3. Discharging or making provision for discharging its liabilities;

4. Distributing its remaining property among its shareholders according to their interests; and

5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;

2. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

3. Subject its directors to standards of conduct different from those prescribed in Article 9 (§ 13.1-673 et seq.);

4. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

5. Prevent commencement of a proceeding by or against the corporation in its corporate name;

6. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

7. Terminate the authority of the registered agent of the corporation.

Code 1950, §§ 13.1-83, 13.1-84; 1956, c. 428; 1985, c. 522.

§ 13.1-746. Known claims against dissolved corporation

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the effective date of such notice.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B. Nothing in this section shall prevent acceleration of liability for an unmatured claim or liability by operation of the agreement under which it was created or exercise of any discretionary right of the claimant thereunder.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

1985, c. 522; 2005, c. 765; 2007, c. 165; 2008, c. 91.

§ 13.1-746.1. Other claims against dissolved corporation

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § 13.1-746 is not treated as a claim for purposes of § 13.1-746 and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address where the claim may be sent; and

2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-746;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

3. A claimant whose claim pursuant to subsection D of § 13.1-746 is not treated as a claim for purposes of § 13.1-746.

D. A claim that is not barred by subsection C of § 13.1-746 or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-746.2, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

2005, c. 765; 2007, c. 165; 2008, c. 91; 2015, c. 611.

§ 13.1-746.2. Court proceedings

A. A dissolved corporation that has complied with the notice requirements of § 13.1-746.1 may file an application with the circuit court of the city or county where the dissolved corporation's

principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that (i) are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § 13.1-746. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-746.1.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each known claimant whose claim is covered by the application.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims covered by that order, and such claims may not be enforced against a shareholder who received assets in liquidation.

2005, c. 765; 2008, c. 91.

§ 13.1-746.3. Director duties

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § 13.1-746, 13.1-746.1 or 13.1-746.2 shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § 13.1-746, 13.1-746.1 or 13.1-746.2.

2005, c. 765.

§ 13.1-747. Grounds for judicial dissolution

A. The circuit court in any city or county described in subsection C may dissolve a corporation:

1. In a proceeding by a shareholder of a corporation that is not a public corporation if it is established that:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; or

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

d. The corporate assets are being misapplied or wasted;

2. In a proceeding by a creditor if it is established that:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

4. In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and terminate its corporate existence;

5. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by shareholders on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the shareholders but it is in their interest that the assets and business be liquidated; or

6. When the Commission has instituted a proceeding for the involuntary termination of corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its business and affairs should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this article upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was located, or, if none in the Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or shareholders parties to a proceeding to be brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other

action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Code 1950, § 13.1-94; 1956, c. 428; 1959, Ex. Sess., c. 57; 1968, c. 112; 1985, c. 522; 2005, c. 765; 2007, c. 165.

§ 13.1-748. Receivership or custodianship

A. Unless an election to purchase has been filed under § 13.1-749.1, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation authorized to transact business in the Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of the Commonwealth; and

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its shareholders and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its shareholders, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Code 1950, §§ 13.1-94 to 13.1-96; 1956, c. 428; 1959, Ex. Sess., c. 57; 1968, c. 112; 1974, c. 291; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2007, c. 165.

§ 13.1-749. Decree of dissolution

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § 13.1-747 exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § 13.1-745 and the notification of claimants in accordance with §§ 13.1-746, 13.1-746.1, and 13.1-746.2. When all of the assets of the corporation have been distributed to its creditors and shareholders, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

Code 1950, § 13.1-99; 1956, c. 428; 1985, c. 522; 2005, c. 765.

§ 13.1-749.1. Election to purchase in lieu of dissolution

A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1 of § 13.1-747 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

B. An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under subdivision A 1 of § 13.1-747 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision A 1 of § 13.1-747 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the petitioner's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

C. If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon application of any party, shall stay the proceedings under subdivision A 1 of § 13.1-747 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision A 1 of § 13.1-747 was filed or as of such other date as the court deems appropriate under the circumstances. The determination of fair value shall include consideration

of all relevant facts and circumstances, including, unless the court determines it would be unjust or inequitable to do so, (i) the petitioner's minority status, (ii) the marketability of the petitioner's shares, (iii) the relevant terms of any shareholders' agreement, and (iv) if the court finds that the value of the corporation has been diminished by the wrongful conduct of controlling shareholders, the petitioner's proportionate claim for any compensable corporate injury. In determining the fair value, the court may, in its discretion, select an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such appraisal to the parties, to the corporation, or both, as the equities may appear to the court.

E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision A 1 b or d of § 13.1-747, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

F. Upon entry of an order under subsection C or E, the court shall dismiss the petition to dissolve the corporation under subdivision A 1 of § 13.1-747 and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court, which shall be enforceable in the same manner as any other judgment.

G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the order becomes final.

H. Any payment by the corporation pursuant to an order under subsection C or E, other than an award of fees and expenses pursuant to subsection E, is subject to the provisions of § 13.1-653.

2005, c. 765; 2007, c. 165; 2012, c. 706; 2015, c. 611.

§ 13.1-750. Articles of termination of corporate existence

A. When a corporation has distributed all of its assets to its creditors and shareholders and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;

2. That all the assets of the corporation have been distributed to its creditors and shareholders; and

3. That the dissolution of the corporation has not been revoked.

B. With the articles of termination of corporate existence, the corporation shall file a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate. In contemplation of submitting the required statement, the corporation may file returns and pay taxes before such returns and taxes would otherwise be due.

C. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

D. The statement "that all the assets of the corporation have been distributed to its creditors and shareholders" means that the corporation has divested itself of all its assets by the payment of claims or liquidating dividends or by assignment to a trustee or trustees for the benefit of claimants or shareholders. If any shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55-210.7, pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55-210.12 except subdivision B 4.

Code 1950, § 13.1-89; 1956, c. 428; 1966, c. 343; 1975, c. 500; 1985, c. 522; 1994, c. 291; 2004, c. 162; 2005, c. 765.

§ 13.1-751. Termination of corporate existence by incorporators or initial directors

A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not issued shares or has not commenced business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;

2. [Repealed.]

3. Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;

4. That no debt of the corporation remains unpaid;

5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

6. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

Code 1950, § 13.1-79; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 234.

§ 13.1-752. Automatic termination of corporate existence

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-636 fails to file a statement of change pursuant to § 13.1-635 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) sell, convey, and dispose of such of its properties that are not to be distributed in kind to its shareholders, (iii) pay, satisfy, and discharge its liabilities and obligations, and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Code 1950, § 13.1-91; 1956, c. 428; 1970, c. 4; 1974, c. 72; 1975, c. 500; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52; 2005, c. 765; 2010, c. 753.

§ 13.1-753. Involuntary termination of corporate existence

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in this Commonwealth as required by law; (iii) has failed to file any document required by this chapter to

be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

Code 1950, § 13.1-93; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1975, cc. 88, 500; 1985, c. 522; 1991, c. 310; 2008, cc. 588, 770.

§ 13.1-754. Reinstatement of a corporation that has ceased to exist

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-749 and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence.

B. To have its corporate existence reinstated, the corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been terminated;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. If the name of the corporation does not comply with the provisions of § 13.1-630 at the time of reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a name that satisfies the provisions of § 13.1-630, with the fee required by this chapter for the filing of articles of amendment; and

6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-635.

C. If the corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement of corporate existence. Upon entry of the order, the corporate existence shall be deemed to have continued from the date of termination as if the termination had never occurred, and any liability incurred by the corporation or a director, officer, or other agent after the termination and before the reinstatement is determined as if the termination of the corporation's existence had never occurred.

Code 1950, § 13.1-92; 1956, c. 428; 1958, c. 564; 1975, c. 88; 1978, c. 804; 1980, c. 654; 1982, c. 648; 1984, c. 69; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. 601; 2005, c. 379; 2006, c. 663; 2015, c. 623.

§ 13.1-755. Survival of remedy after termination of corporate existence

The termination of corporate existence shall not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Code 1950, § 13.1-101; 1956, c. 428; 1985, c. 522.

§ 13.1-756. Repealed

Repealed by Acts 1988, c. 405.

Article 17 - FOREIGN CORPORATIONS

§ 13.1-757. Authority to transact business required

A. A foreign corporation may not transact business in the Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution. The term "transacting business" as used in this subsection shall have no effect on personal jurisdiction under § 8.01-328.1; or

12. Serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

C. The list of activities in subsection B is not exhaustive.

Code 1950, §§ 13.1-102 to 13.1-102.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522; 1990, c. 428; 2005, c. 765.

§ 13.1-758. Consequences of transacting business without authority

A. A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.

B. The successor to a foreign corporation that transacted business in the Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

D. If a foreign corporation transacts business in the Commonwealth without a certificate of authority, each officer, director and employee who does any of such business in the Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than $500 and not more than $5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after the corporation and the individual have been given notice and an opportunity to be heard.

E. Notwithstanding subsections A and B, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Commonwealth.

F. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in the Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation doing such business, or, if none can be found, on the clerk of the Commission or on the corporation in any other manner permitted by law. If any foreign corporation transacts business in the Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service upon the clerk shall be made in accordance with § 12.1-19.1.

Code 1950, §§ 13-218, 13.1-119; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672; 2005, c. 765.

§ 13.1-759. Application for certificate of authority

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § 13.1-762 from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-762;

2. The name of the state or other jurisdiction under whose law it is incorporated, and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The date of incorporation and period of duration;

4. The street address of the foreign corporation's principal office;

5. The address of the proposed registered office of the foreign corporation in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

6. The names and usual business addresses of the current directors and principal officers of the foreign corporation; and

7. The number of shares the corporation is authorized to issue, itemized by class.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

Code 1950, §§ 13.1-106, 13.1-107; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. 348; 2001, cc. 517, 541; 2002, c. 497; 2004, c. 274; 2015, c. 623.

§ 13.1-760. Amended certificate of authority

A. A foreign corporation authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Commission:

1. If it changes its corporate name or the state or other jurisdiction of its incorporation; or

2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § 13.1-762.

B. The requirements of § 13.1-759 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

Code 1950, §§ 13.1-112, 13.1-113; 1956, c. 428; 1976, c. 159; 1985, c. 522; 1986, c. 571; 1987, c. 431; 2015, c. 623.

§ 13.1-761. Effect of certificate of authority

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this Act.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in this Commonwealth.

C. This chapter does not authorize this Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this Commonwealth.

Code 1950, §§ 13.1-102, 13.1-103, 13.1-108; 1956, c. 428; 1985, c. 522.

§ 13.1-762. Corporate name of foreign corporation

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § 13.1-630.

B. If the corporate name of a foreign corporation does not satisfy the requirements of § 13.1-630, to obtain or maintain a certificate of authority to transact business in the Commonwealth:

1. The foreign corporation may use a designated name that adds the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name or, if it is a professional corporation, the words "professional corporation" or "a professional corporation" or the initials "P.C." or "PC" at the end of its corporate name, if it informs the Commission of the designated name; or

2. If its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § 13.1-630, if it informs the Commission of the designated name.

Code 1950, §§ 13.1-104, 13.1-105, 13.1-114; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. 592; 2005, cc. 379, 765; 2012, c. 63; 2015, c. 623.

§ 13.1-763. Registered office and registered agent of foreign corporation

A. Each foreign corporation authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-109; 1956, c. 428; 1985, c. 522; 1994, c. 348; 2000, c. 162; 2001, cc. 517, 541.

§ 13.1-764. Change of registered office or registered agent of a foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-763.

B. A statement of change shall forthwith be filed with the Commission by a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-763.

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and

(c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-763. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office of the foreign corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-110; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. 597; 2010, c. 434.

§ 13.1-765. Resignation of registered agent of foreign corporation

A. The registered agent of a foreign corporation may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2005, c. 765; 2010, c. 434.

§ 13.1-766. Service of process on foreign corporation

A. The registered agent of a foreign corporation authorized to transact business in this Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in this Commonwealth fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Code 1950, §§ 13-214 to 13-217, 13.1-111; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. 517, 541.

§ 13.1-766.1. Merger of foreign corporation authorized to transact business in Commonwealth

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated; however, the filing shall not be required when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's articles of incorporation are not amended by said merger, and the articles or statement of merger filed on behalf of the domestic corporation or eligible entity pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it was incorporated, and comply in behalf of the predecessor corporation with the provisions of § 13.1-767. If a surviving or resulting corporation or limited liability company, business trust, registered limited liability partnership or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth or registered as a foreign limited liability company under § 13.1-1052, as a foreign business trust under § 13.1-1242, as a foreign registered limited liability partnership under § 50-73.138, or as a foreign limited partnership under § 50-73.54, then, within such 30 days, it shall deliver to the Commission an application, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, or, if a foreign limited partnership, for registration as a foreign limited partnership, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation, certificate of limited partnership, partnership certificate, statement of registered limited liability partnership, articles of trust, or articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate, limited partnership, registered lim-

ited liability partnership, business trust, or limited liability company records in the state or other jurisdiction under whose laws it is incorporated, formed, registered, or organized.

C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies, all property in the Commonwealth owned by any of the foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies shall pass to the surviving or resulting foreign corporation, limited liability company, business trust, or limited partnership except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

1986, c. 571; 1990, c. 283; 1992, c. 575; 1997, c. 190; 2004, c. 274; 2006, c. 663; 2015, c. 623.

§ 13.1-766.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § 13.1-767; or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. 274.

§ 13.1-767. Withdrawal of foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign corporation and the name of the state or other jurisdiction under whose law it is incorporated;

2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on the clerk under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate

name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1 and service upon the foreign corporation may be made in any other manner permitted by law.

Code 1950, §§ 13-211.1, 13.1-115 to 13.1-116, 13.1-118; 1956, c. 428; 1958, cc. 506, 564; 1975, cc. 88, 500; 1985, c. 522; 1991, c. 672; 1994, c. 291; 2005, c. 765; 2012, c. 130; 2015, c. 623.

§ 13.1-768. Automatic revocation of certificate of authority

A. If any foreign corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due date determined in accordance with subsection A of § 13.1-775.1 of each year.

C. If any foreign corporation whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-765 fails to file a statement of change pursuant to § 13.1-764 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of the impending revocation of its certificate of authority. If the foreign corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-117; 1956, c. 428; 1970, c. 4; 1980, c. 192; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52; 2005, c. 765; 2010, c. 753.

§ 13.1-769. Involuntary revocation of certificate of authority

A. The certificate of authority to do business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or country of its incorporation; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

1985, c. 522; 1991, c. 672; 1995, c. 76; 2005, c. 765; 2008, cc. 588, 770; 2015, c. 623.

§ 13.1-769.1. Reinstatement of a foreign corporation whose certificate of authority has been withdrawn or revoked

A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § 13.1-769.

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any mergers entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

6. If the name of the foreign corporation does not comply with the provisions of § 13.1-762 at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-762, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-764.

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact business in the Commonwealth.

1987, c. 431; 1988, c. 405; 2004, c. 274; 2005, c. 765; 2015, c. 623.

Article 18 - RECORDS AND REPORTS

§ 13.1-770. Corporate records

A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class and series, if any, of shares showing the number and class and series, if any, of shares held by each. However, the foregoing shall not require the corporation or its agent to maintain, as part of such record of shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf except to the extent that the corporation has established and maintains a procedure for registration of such rights under § 13.1-664.

D. A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision L 5 of § 13.1-604 regarding facts on which a filed document is dependent;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

4. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

5. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 13.1-774;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-775.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2008, c. 91; 2010, c. 782.

§ 13.1-771. Inspection of records by shareholders

A. Subject to subsection C of § 13.1-772, a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-770 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

C. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection D and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of shareholders of record.

D. A shareholder may inspect and copy the records identified in subsection C only if:

1. The shareholder has been a shareholder for at least six months immediately preceding the shareholder's demand or is the holder of record or beneficial owner of at least five percent of all of the outstanding shares;

2. The shareholder's demand is made in good faith and for a proper purpose;

3. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

4. The records are directly connected with the shareholder's purpose.

E. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

F. This section does not affect:

1. The right of a shareholder to inspect records under § 13.1-661 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

2. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

G. For purposes of this section, other than subdivision C 3, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2008, c. 91; 2010, c. 782.

§ 13.1-772. Scope of inspection right

A. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

B. The right to copy records under § 13.1-771 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction, and transmission of the records.

D. The corporation may comply with a shareholder's demand to inspect the record of shareholders under subdivision C 3 of § 13.1-771 by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2010, c. 782.

§ 13.1-773. Court-ordered inspection

A. If a corporation does not allow a shareholder who complies with subsection A of § 13.1-771 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

B. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections C and D of § 13.1-771 may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order if the shareholder proves that the corporation refused inspection without a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

1985, c. 522; 2010, c. 782.

§ 13.1-773.1. Inspection of records by directors

A. A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office, or if none in the Commonwealth, its registered office, is located may order inspection and copying of the books, records and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

2005, c. 765.

§ 13.1-774. Financial statements for shareholders

A. If requested in writing by any shareholder, a corporation shall furnish the shareholder with the financial statements for the most recent fiscal year, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

B. If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If the annual financial statements are not reported upon by a certified public accountant, the president or the person responsible for the corporation's

accounting records shall provide the shareholder with a statement of the basis of accounting used in preparation of the annual financial statements and a description of any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

C. If a corporation does not comply with a shareholder's request for financial statements within 30 days of delivery of such request to the corporation, the circuit court in the city or county where the corporation's principal office is located, or, if none in the Commonwealth, where its registered office is located may, upon application of the shareholder, summarily order the corporation to furnish such financial statements.

D. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. 765; 2010, c. 782.

§ 13.1-775. Annual report of domestic and foreign corporations

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;

2. The address of the registered office of the corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in the Commonwealth at such address;

3. The names and post office addresses of the directors and the principal officers of the corporation; and

4. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by class.

B. The report shall be made on forms prescribed and furnished by the Commission and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor

more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-120, 13.1-121; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1986, c. 233; 1987, c. 2; 1997, c. 216; 2005, c. 765; 2010, c. 753.

§ 13.1-775.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely

A. Every domestic corporation and every foreign corporation authorized to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee as prescribed by this section, provided that the initial annual registration fee to be paid by a domestic corporation created by entity conversion shall be due in the year after the calendar year in which it converted. At the discretion of the Commission, the annual registration fee due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

Any such corporation whose number of authorized shares is 5,000 or less shall pay an annual registration fee of $50. Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of $50 plus $15 for each 5,000 shares or fraction thereof in excess of 5,000 shares, up to a maximum of $850.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records the number of authorized shares of each domestic corporation and each foreign corporation authorized to transact business in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to transact business in the Commonwealth and, except as provided in subsection A, shall assess against each such corporation the annual registration fee herein imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of 10 percent of the annual registration fee, or

$10, whichever is greater, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

1988, c. 405; 1991, c. 311; 1997, c. 216; 2005, c. 765; 2010, c. 753.

§ 13.1-775.2. Collection of unpaid bills for registration fees

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § 8.01-261.

1988, c. 405.

Article 19 - PROCEEDING FOR DETERMINATION OF SHAREHOLDERS

§ 13.1-776. Definitions

As used in this article, unless the context otherwise requires, the term:

"Asserted shareholder" means an entity holding a certificate for one or more shares of stock of a corporation on which it is stated to be the owner thereof but which is not listed as a shareholder on the records of the corporation.

"Corporation" shall have the meaning provided in § 13.1-603.

"Entity" means one or more persons, partnerships, unincorporated associations, corporations or other organizations entitled to hold property in its own name.

"Lost shareholder" means a shareholder shown by the records of a corporation to have been a shareholder for more than seven years but who, throughout that period, neither claimed a dividend or other sum nor corresponded in writing with the corporation or otherwise indicated an interest as evidenced by a memorandum or other record on file with the corporation and the corporation does not know the location of the shareholder at the end of such seven-year period.

"Shareholder" means an entity shown by the records of a corporation to be the owner of one or more shares of its outstanding capital stock.

Code 1950, § 13.1-156; 1979, c. 90; 1983, c. 190; 1985, c. 522; 2005, c. 765.

§ 13.1-777. Institution of proceeding to determine shareholders

A. Whenever the records of a corporation are such that its board of directors determines that there are entities that appear to be lost shareholders who may or may not be entitled to the shares of stock shown by its records or that there may be asserted shareholders, the board of directors may, by a suit in equity brought in the circuit court of the city or county in which its registered office is located, begin a proceeding for a determination of the identity of its proper shareholders.

B. Each lost shareholder shall be named a party defendant. Asserted shareholders shall be joined as defendants as persons unknown. Service shall be effected by order of publication pursuant to § 8.01-316. The Commonwealth shall be named a party defendant and service shall be effected on the Attorney General.

C. The court shall hear all evidence that shall be available as to the identity of lost shareholders and asserted shareholders and whether or not they are entitled to own shares of stock of the corporation.

D. The court, on the basis of such evidence, shall determine, to the best of its ability, the identity of the lost shareholders and asserted shareholders of the corporation. Such determination shall be final, subject to appeal to the Supreme Court of Virginia.

E. The court, in its final decree, shall declare that the shares owned by lost shareholders or asserted shareholders and any dividends declared thereon and unpaid shall be the property of the Commonwealth in accordance with § 55-210.6:1 of the Code of Virginia .

Code 1950, §§ 13.1-157 to 13.1-161; 1979, c. 90; 1985, c. 522.

Article 20 - TRANSITION PROVISIONS

§ 13.1-778. Application to existing corporations

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their shareholders. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

Code 1950, § 13.1-128; 1956, c. 428; 1959, Ex. Sess., c. 57; 1975, c. 500; 1985, c. 522.

§ 13.1-779. Savings provision

A. Except as provided in subsection B of this section, the repeal of a statute by this chapter does not affect:

1. The operation of the statute or any action taken under it before its repeal;

2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;

3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

Code 1950, § 13.1-130; 1956, c. 428; 1985, c. 522; 2010, c. 782.

§ 13.1-780. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Article 21 - MISCELLANEOUS PROVISIONS

§ 13.1-781. Property title records

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign corporation has changed or corrected its name, merged into a domestic or foreign corporation or eligible entity, converted into a domestic or foreign eligible entity, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

2007, c. 771.

Article 22 - BENEFIT CORPORATIONS

§ 13.1-782. Definitions

As used in this article:

"Benefit corporation" means a corporation organized pursuant to the provisions of this chapter:

1. That has elected to become subject to this article; and

2. The status of which as a benefit corporation has not been terminated under § 13.1-786.

"Benefit enforcement proceeding" means any claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for (i) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation or bylaws or otherwise adopted by its board of directors or (ii) a violation of a duty or standard of conduct under this article.

"General public benefit" means a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

"Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, either directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or indirectly as a director, an officer, an owner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

1. The person is, or has been within the last three years, an employee of the benefit corporation or a subsidiary of the benefit corporation;

2. An immediate family member of the person is, or has been within the last three years, an executive officer of the benefit corporation or its subsidiary; or

3. There is beneficial ownership of five percent or more of the outstanding shares of the benefit corporation by:

a. The person; or

b. An entity:

(1) Of which the person is a director, an officer, or a manager; or

(2) In which the person owns beneficially five percent or more of the outstanding equity interests, which percentage shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"Specific public benefit" means a benefit that serves one or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, including:

1. Providing low-income or underserved individuals or communities with beneficial products or services;

2. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

3. Preserving or improving the environment;

4. Improving human health;

5. Promoting the arts, sciences, or advancement of knowledge;

6. Increasing the flow of capital to entities with a public benefit purpose; and

7. Conferring any other particular benefit on society or the environment.

"Subsidiary" means, in relation to an individual, an entity in which the individual either (i) owns directly or indirectly equity interests entitled to cast a majority of the votes entitled to be cast generally in an election of directors or members of the governing body of the entity or (ii) otherwise owns or controls voting or contractual power to exercise effective governing control of the entity. The percentage of ownership of equity interests or ownership or control of power to exercise control shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

1. Is developed by a person that is independent of the benefit corporation; and

2. Is transparent because the following information about the standard is publicly available:

a. The factors considered when measuring the performance of a business;

b. The relative weightings of those factors; and

c. The identity of the persons that develop and control changes to the standard and the process by which those changes are made.

2011, c. 698.

§ 13.1-783. Application and effect of article

A. This article shall apply to all benefit corporations.

B. The existence of a provision of this article shall not of itself create an implication that a contrary or different rule of law applies to a corporation organized pursuant to the provisions of this

chapter that is not a benefit corporation. This article shall not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.

C. The specific provisions of this article shall control over the general provisions of other articles of this chapter.

2011, c. 698.

§ 13.1-784. Formation of benefit corporations

A benefit corporation shall be formed in accordance with Article 3 (§ 13.1-618 et seq.), and its articles, as initially filed with the Commission or as amended, shall state that it is a benefit corporation.

2011, c. 698.

§ 13.1-785. Election of status after formation

A corporation that was not formed as a benefit corporation may become a benefit corporation by amending its articles so that they contain, in addition to matters required by § 13.1-619, a statement that the corporation is a benefit corporation. Any such amendment to the articles of incorporation shall be adopted in accordance with the procedures set forth in § 13.1-707; however, the amendment shall be approved by all shareholders entitled to vote on the amendment, or if no shares have yet been issued, in accordance with § 13.1-709.

2011, c. 698.

§ 13.1-786. Termination of status

A benefit corporation may terminate its status as such and cease to be subject to this article by amending its articles to delete the provision required by § 13.1-784 to be set forth in the articles of incorporation, which amendment shall be adopted in accordance with the procedures set forth in § 13.1-707, or if no shares have yet been issued, in accordance with § 13.1-709.

2011, c. 698.

§ 13.1-787. Corporate purposes

A. A benefit corporation shall have as one of its purposes the purpose of creating a general public benefit. The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. A specific public benefit may also be specified in the bylaws or otherwise adopted by the board of directors. This purpose is in addition to its purpose under § 13.1-626.

B. The creation of a general public benefit and one or more specific public benefits, if any, under subsection A is in the best interests of the benefit corporation.

C. A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create, which amendment shall be adopted in accordance with the procedures set forth in § 13.1-707.

2011, c. 698.

§ 13.1-788. Standard of conduct for directors

A. Subject to § 13.1-690, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

1. Shall consider the effects of any corporate action upon:

a. The shareholders of the benefit corporation;

b. The employees and workforce of the benefit corporation, its subsidiaries, and suppliers;

c. The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

d. Community and societal considerations, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located;

e. The local and global environment;

f. The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests and the general and specific public benefit purposes of the benefit corporation may be best served by the continued independence of the benefit corporation; and

g. The ability of the benefit corporation to accomplish its general and any specific public benefit purpose;

2. May consider:

a. The resources; intent; and past, stated, and potential conduct of any person seeking to acquire control of the benefit corporation; and

b. Other pertinent factors or the interests of any other person that they deem appropriate; and

3. Need not give priority to the interests of a particular person referred to in subdivisions 1 and 2 over the interests of any other person unless the benefit corporation has stated its intention to give priority to interests related to a specific public benefit purpose identified in its articles.

B. The consideration of interests and factors in the manner required by subsection A shall not constitute a violation of § 13.1-690 or a director conflict of interests under § 13.1-691.

C. In any proceeding brought by or in the right of a benefit corporation or brought by or on behalf of the shareholders of a benefit corporation, a director is not personally liable for monetary damages for:

1. Any action taken as a director if the director performed the duties of office in compliance with § 13.1-690 and this section; or

2. Failure of the benefit corporation to create general public benefit or any specific public benefit specified in its articles of incorporation or bylaws or otherwise adopted by the board of directors.

2011, c. 698.

§ 13.1-789. Limitation upon liability of officers

An officer of a benefit corporation shall have no liability for actions taken that the officer believes, in his good faith business judgment, are consistent with (i) the general public benefit or specific public benefit specified in the articles of incorporation or bylaws or otherwise adopted by the board of directors and (ii) the requirements of any third-party standard then in effect for the corporation.

2011, c. 698.

§ 13.1-790. Right of action

A. The duties of directors and officers under this article, the obligation of a benefit corporation to prepare and make available the annual benefit report required under § 13.1-791, and the general and any specific public benefit purpose of a benefit corporation may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this article and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

B. A benefit enforcement proceeding may be commenced or maintained only:

1. Directly by the benefit corporation; or

2. Derivatively by:

a. A shareholder of the benefit corporation;

b. A director of the benefit corporation; or

c. Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

2011, c. 698.

§ 13.1-791. Annual benefit report

A. A benefit corporation shall prepare an annual benefit report that includes all of the following:

1. A narrative description of:

a. The ways in which the benefit corporation pursued the general public benefit during the year and the extent to which the general public benefit was created; and

b. Both:

(1) The ways in which the benefit corporation pursued any specific public benefit that the articles of incorporation or bylaws, or other action taken by the board of directors, state it is the purpose of the benefit corporation to create; and

(2) The extent to which that specific public benefit was created; and

c. Any circumstances that have hindered the creation by the benefit corporation of the general or any specific public benefit;

2. An assessment of the social and environmental performance of the benefit corporation. The assessment shall be:

a. Prepared in accordance with a third-party standard specified in the articles of incorporation, the bylaws, or otherwise adopted by the board of directors and applied consistently with any application of that standard in prior benefit reports; or

b. Accompanied by an explanation of the reasons for any inconsistent application; and

3. Any other information or disclosures that may be required under any third-party standard adopted by the directors of the benefit corporation.

B. The benefit report shall be made available annually to each shareholder of the benefit corporation:

1. Within 120 days following the end of the fiscal year of the benefit corporation; or

2. At the same time that the benefit corporation delivers any other annual report to its shareholders.

C. A benefit corporation shall post its most recent benefit report on a publicly accessible portion of its Internet website, if any. If a benefit corporation does not have an Internet website, it shall make a written or electronic copy of its most recent benefit report available upon written request from any person. A benefit corporation shall not be required to publicly disclose to persons other than its shareholders any proprietary, confidential, or individual compensation information contained in its benefit report to the extent that any third-party standard adopted by the directors of the benefit corporation permits the omission of such information from public disclosure.

2011, c. 698.

§§ 13.1-792 through 13.1-800. Reserved
Reserved.

Chapter 10 - VIRGINIA NONSTOCK CORPORATION ACT

Article 1 - GENERAL PROVISIONS

§ 13.1-801. Short title
This chapter shall be known as the Virginia Nonstock Corporation Act or the "Act."

Code 1950, § 13.1-201; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-802. Reservation of power to amend or repeal
The General Assembly shall have power to amend or repeal all or part of this Act at any time, and all domestic and foreign corporations subject to this Act shall be governed by the amendment or repeal.

Code 1950, § 13.1-291; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-803. Definitions

As used in this Act:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, consolidation or correction. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation without the accompanying articles of restatement, amendment, domestication, or merger.

"Board of directors" means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting colors, or capitals, or is underlined is conspicuous.

"Corporation" or "domestic corporation" means a corporation not authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of the Commonwealth on January 1, 1986, or that, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth or that has become a domestic corporation of the Commonwealth pursuant to Article 11.1 (§ 13.1-898.2 et seq.) of this Act.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 13.1-810, by electronic transmission.

"Disinterested director" means a director who, at the time action is to be taken under § 13.1-871, 13.1-878, or 13.1-880, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-878 or 13.1-880, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (a) nomination or election of the director to the current board by any person, acting

alone or participating with others, who is so interested in the matter or (b) service as a director of another corporation of which an interested person is also a director.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

"Domestic business trust" has the same meaning as specified in § 13.1-1201.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under § 50-73.88 or predecessor law of the Commonwealth and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-603.

"Effective date of notice" is defined in § 13.1-810.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-810.

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-810.

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock corporation.

"Eligible interests" means interests or shares.

"Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes any domestic or foreign corporation; any domestic or foreign stock corporation; any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States, and any foreign government.

"Foreign business trust" has the same meaning as specified in § 13.1-1201.

"Foreign corporation" means a corporation not authorized by law to issue shares, organized under laws other than the laws of the Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

"Foreign stock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-603.

"Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the Commonwealth.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of a foreign or domestic unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

"Member" means one having a membership interest in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

"Membership interest" means the interest of a member in a domestic or foreign corporation, including voting and all other rights associated with membership.

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of this Act.

"Proceeding" includes civil suit and criminal, administrative and investigatory action conducted by a governmental agency.

"Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this Act on which a corporation determines the identity of its members and their membership interests for purposes of this Act. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shares" has the same meaning as specified in § 13.1-603.

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

"State" when referring to a part of the United States, includes a state, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership, or business trust.

"United States" includes any district, authority, bureau, commission, department, or any other agency of the United States.

"Voting group" means all members of one or more classes that under the articles of incorporation or this Act are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation or this Act to vote generally on the matter are for that purpose a single voting group.

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

Code 1950, § 13.1-202; 1956, c. 428; 1985, c. 522; 1997, c. 801; 2002, c. 285; 2007, c. 925; 2010, c. 171; 2012, c. 706.

§ 13.1-804. Filing requirements

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this Act requires or permits to be filed with the Commission.

C. The document shall contain the information required by this Act. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § 13.1-936 shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person signing the document shall state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this Act, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any charter or entrance fee or registration fee required by this Act.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this Act and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

L. Whenever a provision of this Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts may be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of or actions taken under an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10 (§ 13.1-884 et seq.) or 11 (§ 13.1-894 et seq.) of this Act; and

b. "Plan" means a plan of merger.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. The registered office of any entity required in a filed document;

c. The registered agent of any entity required in a filed document;

d. The number of members and designation of each class of members;

e. The effective date of a filed document; and

f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document and that fact is not objectively ascertainable by reference to a source described

in subdivision 2a or to a document that is a matter of public record, or if the affected members have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the members.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

1985, c. 522; 1986, c. 231; 1995, c. 70; 2000, c. 995; 2007, c. 925; 2010, c. 171; 2015, c. 623.

§ 13.1-804.1. Filing with the Commission pursuant to reorganization

A. Notwithstanding anything to the contrary contained in § 13.1-804, 13.1-819, 13.1-896, or 13.1-904, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may, without action by the board of directors or members to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute, put into effect and carry out the plan and decrees of the court relative thereto (i) through an amendment or amendments to the corporation's articles of incorporation containing terms and conditions permitted by this Act, (ii) through a plan of merger, or (iii) through dissolution.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, or dissolution, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;

2. The text of each amendment, plan of merger, or dissolution approved by the court;

3. The date of the court's order or decree approving the articles of amendment, plan of merger, or dissolution;

4. The title of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, merger, or dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, or dissolution.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

2007, c. 925.

§ 13.1-805. Issuance of certificate by Commission; recordation of documents

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the requirements of law and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

Code 1950, § 13.1-288; 1956, c. 428; 1982, c. 375; 1984, c. 295; 1985, c. 522; 1986, c. 231; 1987, c. 183; 1988, c. 405; 1989, c. 152 .

§ 13.1-806. Effective time and date of document

A. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the 15th day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this Act.

B. Notwithstanding subsection A, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A, for purposes of §§ 13.1-829 and 13.1-924, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

1985, c. 522; 2007, c. 925.

§ 13.1-807. Correcting filed articles

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized

or defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;

3. Each inaccurate or defective matter that is to be corrected;

4. The correction of each inaccurate or defective matter; and

5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than 30 days after the effective date of the certificate relating to the articles to be corrected.

1985, c. 522; 2007, c. 925; 2008, cc. 91, 509.

§ 13.1-808. Evidentiary effect of copy of filed document

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk of the Commission or a member of the staff of the office of the clerk, which in either case may be in facsimile, and the seal of the Commission, which may be in facsimile, is conclusive evidence that the document has been admitted to the records of the Commission.

1985, c. 522; 2007, c. 925.

§ 13.1-809. Certificate of good standing

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in the Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in the Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of the Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in the Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this Act have been paid;

2. An annual report required by § 13.1-936 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

1985, c. 522; 1988, c. 405; 1993, c. 60; 2006, c. 663; 2007, c. 925.

§ 13.1-810. Notices and other communications

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television, or other form of public communication in the area where notice is intended to be given.

C. Notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.

E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:

a. A member's address shown on the corporation's record of members maintained by the corporation pursuant to subsection C of § 13.1-932;

b. A director's residence or usual place of business;

c. The corporation's principal place of business; or

d. The corporation's registered office when left with the corporation's registered agent;

2. If mailed postage prepaid and correctly addressed to a member, upon deposit in the United States mail;

3. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received or: (i) if sent by registered or certified

mail return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;

4. If an electronic transmission, when it is received as provided in subsection F; and

5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

1985, c. 522; 2007, c. 925; 2010, c. 171.

§ 13.1-810.1. Number of members

A. For purposes of this Act, the following identified as a member in a corporation's current record of members constitutes one member:

1. Two or more persons who together have a single membership interest in the corporation;

2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or

3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this Act, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

2007, c. 925; 2015, c. 623.

§ 13.1-811. Penalty for signing false documents

A. It shall be unlawful for any person to sign a document which he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-295; 1958, c. 506; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-812. Unlawful to transact or offer to transact business as a corporation unless authorized

It shall be unlawful for any person to transact business in the Commonwealth as a corporation or to offer or advertise to transact business in the Commonwealth as a corporation unless the alleged

corporation is either a domestic corporation or a foreign corporation authorized to transact business in the Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-296; 1958, c. 565; 1981, c. 320; 1985, c. 522; 2007, c. 925.

§ 13.1-813. Hearing and finality of Commission action; injunctions

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a member or director, filed with the Commission and the corporation within 30 days after the effective date of the certificate, in which the member or director asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the member or director, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or members for the purpose of authorizing or consummating any amendment, merger, domestication, or termination of corporate existence, or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § 13.1-845 or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or of its own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

Code 1950, § 13.1-287; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925; 2008, c. 91; 2010, c. 171; 2015, c. 623.

§ 13.1-814. Shares of stock and dividends prohibited

A corporation shall not issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers, except that a corporation may make distributions to another nonprofit corporation that is a member of such corporation or has the power to appoint one or more of its directors. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, including pensions, may confer benefits upon its members in conformity with its purposes, and may make

distributions to its members or others as permitted by this Act upon dissolution or final liquidation and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

Code 1950, § 13.1-229; 1956, c. 428; 1985, cc. 380, 522.

§ 13.1-814.1. Special provisions for community associations

A. As used in this section, "community association" shall mean a corporation incorporated under this chapter or under former Chapter 2 of this title which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the corporation.

B. Notwithstanding the requirements of §§ 13.1-851, 13.1-852, 13.1-855, 13.1-856, 13.1-857, 13.1-858 and 13.1-862, the provisions set forth in those sections need not be set forth in the articles of incorporation of a community association and shall be effective if set forth in the bylaws.

C. Notwithstanding the provisions of §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899, the provisions of the bylaws of any community association in existence on or before January 1, 1986, shall continue to govern (i) the procedures for and election of members of the board of directors, (ii) the amendment of the bylaws, (iii) the sale, release, exchange or disposition of all or substantially all of the corporation's property, whether or not in the usual and regular course of business, and (iv) the corporation's ability to mortgage, pledge, or dedicate to repayment of indebtedness, or otherwise encumber its property; provided, that the community association may, in accordance with its current articles of incorporation and bylaws, vote to amend its corporate documents to become subject to §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899.

1986, c. 532.

Article 2 - FEES

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this Act, except the annual report required by § 13.1-936, a statement of change pursuant to § 13.1-834 or 13.1-926, and a statement of resignation pursuant

to § 13.1-835 or 13.1-927, until all fees, charges, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this Act or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § 13.1-936.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;

2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity, or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. Annual registration fee assessments that have been paid shall not be refunded.

Code 1950, § 13.1-284; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1997, c. 216; 2003, c. 374; 2006, c. 659; 2007, cc. 810, 925; 2009, c. 216; 2010, c. 753; 2015, c. 623.

§ 13.1-815.1. Charter and entrance fees for corporations

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee in the amount of $50 into the state treasury, and every foreign corporation shall pay an entrance fee of $50 into the state treasury for its certificate of authority to transact business in the Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. For any foreign corporation that files an application for a certificate of authority to transact business

in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.

1988, c. 405; 2003, c. 374; 2007, cc. 810, 925; 2008, c. 509.

§ 13.1-816. Fees for filing documents or issuing certificates

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing any one of the following, the fee shall be $25:

a. Articles of incorporation, domestication, or incorporation surrender.

b. Articles of amendment or restatement.

c. Articles of merger.

d. Articles of correction.

e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

h. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

i. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be $10:

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for withdrawal of a foreign corporation.

3. For issuing a certificate pursuant to § 13.1-945, the fee shall be $6.

Code 1950, §§ 13.1-285, 13.1-286.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1987, c. 183; 1988, c. 405; 1995, c. 368; 2003, c. 374; 2004, c. 274; 2007, cc. 771, 925; 2012, c. 130.

§ 13.1-817. Repealed

Repealed by Acts 1991, c. 123 .

Article 3 - FORMATION OF CORPORATIONS

§ 13.1-818. Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by signing and delivering articles of incorporation to the Commission for filing.

Code 1950, § 13.1-230; 1956, c. 428; 1968, c. 42; 1975, c. 500; 1985, c. 522; 2015, c. 623.

§ 13.1-819. Articles of incorporation

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § 13.1-829.

2. If the corporation is to have no members, a statement to that effect.

3. If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting or denying the right to vote.

4. If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed, and a designation of ex officio directors, if any.

5. The address of the corporation's initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;

2. Provisions not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized;

b. Regarding the management of the business and regulation of the affairs of the corporation;

c. Defining, limiting and regulating the powers of the corporation, its directors, and its members; and

d. Any provision that under this Act is required or permitted to be set forth in the bylaws.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-804.

E. Except as provided in subsection A of § 13.1-855, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Code 1950, § 13.1-231; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1982, c. 182; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541; 2007, c. 925.

§ 13.1-820. Issuance of certificate of incorporation

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation.

When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

Code 1950, §§ 13-223, 13-224, 13.1-232, 13.1-233; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-821. Liability for preincorporation transactions

All persons purporting to act as or on behalf of a corporation, but knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

1985, c. 522.

§ 13.1-822. Organization of corporation

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by adopting bylaws, appointing officers, and carrying on any other business brought before the meeting or

2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of the Commonwealth.

Code 1950, § 13.1-234; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-823. Bylaws

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

Code 1950, §§ 13-234, 13.1-212; 1956, c. 428; 1985, c. 522; 2007, c. 925; 2010, c. 171.

§ 13.1-824. Emergency bylaws

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;

2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and

2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

Code 1950, § 13.1-212.1; 1962, c. 102; 1975, c. 500; 1985, c. 522; 2007, c. 925.

Article 4 - PURPOSES AND POWERS

§ 13.1-825. Purposes

Every corporation incorporated under this Act has the purpose of engaging in any lawful activity, unless:

1. A statute requires the corporation to issue shares or one of the purposes of the corporation is to conduct the business of a public service company other than a sewer company; or

2. A more limited purpose is (i) set forth in the articles of incorporation or (ii) required to be set forth in the articles of incorporation by any other law of the Commonwealth.

Code 1950, § 13.1-204; 1956, c. 428; 1958, c. 564; 1960, c. 296; 1971, Ex. Sess., c. 98; 1985, c. 522; 2007, c. 925.

§ 13.1-826. General powers

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend, in its corporate name;

2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any other entity;

6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, which may be convertible into, or include the option to purchase, other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

8. To transact its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;

9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;

11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;

12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such insurance after the relationship terminates;

14. To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation;

15. To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Nonstock Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(B) or (C) of the Internal Revenue Code shall apply or unless the board of

directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

Code 1950, § 13.1-204.1; 1975, c. 500; 1985, c. 522; 1996, c. 77; 2007, c. 925; 2015, c. 611.

§ 13.1-827. Emergency powers

A. In anticipation of or during an emergency defined in subsection D, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

2. One or more officers of the corporation present at a meeting of the board of directors may be deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

1. Binds the corporation; and

2. May not be used to impose liability on a director, officer, employee, or agent of the corporation.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

1985, c. 522; 2007, c. 925.

§ 13.1-828. Ultra vires

A. Except as provided in subsection B, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a member or a director against the corporation to enjoin the act;

2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former officer, director, employee, or agent of the corporation; or

3. In a proceeding against a corporation before the Commission.

C. In a proceeding by a member or a director under subdivision B 1 to enjoin an unauthorized corporate act, the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Code 1950, § 13.1-206; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

Article 5 - NAME

§ 13.1-829. Corporate name

A. A corporate name shall not contain:

1. Any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business which it is authorized to conduct;

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended;

3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company or a limited partnership; or

4. Any word or phrase that is prohibited by law for such corporation.

B. Except as authorized by subsection C, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

C. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection B. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

D. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this Act.

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection B, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

Code 1950, § 13.1-207; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. 592; 2005, c. 379; 2007, c. 925; 2009, c. 216; 2012, c. 63.

§ 13.1-830. Reserved name

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation. If the Commission finds that the corporate name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved corporate name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

Code 1950, § 13.1-207.1; 1975, c. 500; 1985, c. 522; 2006, c. 505; 2007, c. 925; 2015, c. 444.

§ 13.1-831. Registered name

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § 13.1-924, if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection B of § 13.1-829.

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § 13.1-924, by:

1. Filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § 13.1-924, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee in the amount of $20. Except as provided in subsection E, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B, and paying a renewal fee of $20. The renewal application is effective when filed in accordance with this section and, except as provided in subsection E, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in the Commonwealth under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this Act or by another foreign corporation thereafter authorized to transact business in the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a

certificate of authority to transact business in the Commonwealth or consents to the authorization of another foreign corporation to transact business in the Commonwealth under the registered name.

F. A foreign corporation that has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of $10.

Code 1950, § 13.1-207.2; 1975, c. 500; 1981, c. 522; 1985, c. 522; 1995, c. 114; 2002, c. 607; 2007, c. 925.

§ 13.1-832. Repealed

Repealed by Acts 2007, c. 771, cl. 2.

Article 6 - OFFICE AND AGENT

§ 13.1-833. Registered office and registered agent

A. Each corporation shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of the Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-208; 1956, c. 428; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541; 2007, c. 925.

§ 13.1-834. Change of registered office or registered agent

A. A corporation may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-833.

B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-833.

C. A corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-833. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-209; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. 597; 2007, c. 925; 2010, c. 434.

§ 13.1-835. Resignation of registered agent

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2007, c. 925; 2010, c. 434.

§ 13.1-836. Service on corporation

A. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons

in the office of the registered agent upon whom any such process, notice or demand may be served and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Code 1950, §§ 13-12, 13-14, 13.1-210; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1991, c. 672; 2001, cc. 517, 541; 2007, c. 925.

Article 7 - MEMBERS AND MEETINGS

§ 13.1-837. Members

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws. A corporation may issue certificates evidencing membership interests therein. Membership interests shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

Code 1950, § 13.1-211; 1956, c. 428; 1958, c. 564; 1982, c. 182; 1985, c. 522; 2007, c. 925.

§ 13.1-838. Annual meeting

A. A corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws.

B. Annual meetings of members may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925; 2012, c. 706.

§ 13.1-839. Special meeting

A. A corporation shall hold a special meeting of members:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § 13.1-840 or 13.1-844, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

D. Special members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-842 may be conducted at a special members' meeting.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925; 2012, c. 706.

§ 13.1-840. Court-ordered meeting

A. The circuit court of the city or county where a corporation's principal office is located, or, if none in the Commonwealth, where its registered office is located, may, after notice to the corporation, order a meeting of members to be held:

1. On petition of any member of the corporation entitled to participate in an annual meeting if an annual meeting was not held within 15 months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

2. On petition of a member who signed a demand for a special meeting that satisfies the requirements of § 13.1-839 if:

a. Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

b. The special meeting was not held in accordance with the notice.

B. The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

1985, c. 522; 2007, c. 925.

§ 13.1-841. Corporate action without meeting

A.1. Corporate action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without prior notice if the corporate action is taken by all members entitled to vote on the corporate action, in which case no corporate action by the board of directors shall be required.

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this chapter to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by the members entitled to take such corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein, provided the consent states the date of execution by each member.

B. If not otherwise determined under § 13.1-840 or 13.1-844, the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of a vote of voting members at a meeting and may be described as such in any document filed with the Commission under this chapter.

D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to members in a

notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this chapter requires that notice of proposed corporate action be given to nonvoting members and the corporate action is to be taken by consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action not less than five days before it is taken. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to nonvoting members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

F. Any person, whether or not then a member, may provide that a consent in writing as a member shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a member at such future time and (ii) the person did not revoke the consent prior to such future time.

Code 1950, § 13.1-216; 1956, c. 428; 1985, c. 522; 2007, c. 925; 2015, c. 611.

§ 13.1-842. Notice of meeting

A. 1. A corporation shall notify members of the date, time and place of each annual and special members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than 60 days, and the second not less than seven days before the date of the meeting.

B. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-840 or 13.1-844, the record date for determining members entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place is announced at the

meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-844, however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

Code 1950, § 13.1-214; 1956, c. 428; 1958, c. 564; 1960, c. 214; 1985, c. 522; 1986, c. 529; 2002, c. 285; 2007, c. 925; 2010, c. 171; 2015, c. 611.

§ 13.1-843. Waiver of notice

A. A member may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Code 1950, § 13.1-215; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-844. Record date

A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting groups in order to make a determination of members for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members.

C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

1985, c. 522; 2007, c. 925.

§ 13.1-844.1. Conduct of the meeting

A. At each meeting of members, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls will open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and to close upon the final adjournment of the meeting.

2007, c. 925.

§ 13.1-844.2. Remote participation in annual and special meetings

A. Members may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a member; and

2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

2010, c. 171.

§ 13.1-845. Members' list for meeting

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If the board of directors fixes a different record date to determine the members entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be arranged by voting group, and show the address of each member.

B. The members' list for notice shall be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A members' list for voting shall be similarly available for inspection promptly after the record date for voting. A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements

set forth in subsection C of § 13.1-933, to copy a list, during the regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members entitled to vote available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a members' list before or at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a members' list does not affect the validity of action taken at the meeting.

1985, c. 522; 2007, c. 925; 2010, c. 171.

§ 13.1-846. Voting entitlement of members

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

Code 1950, § 13.1-217; 1956, c. 428; 1975, c. 500; 1982, c. 182; 1985, c. 522; 2002, c. 285; 2007, c. 925.

§ 13.1-847. Proxies

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy.

B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment;

2. An employee of the corporation whose employment contract requires the appointment; or

3. A party to a voting agreement created under § 13.1-852.2.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. Subject to § 13.1-848 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any membership interest may vote such membership interest by proxy.

1985, c. 522; 1999, c. 101; 2002, c. 285; 2007, c. 925; 2010, c. 171.

§ 13.1-847.1. Voting procedures and inspectors of elections

A. A corporation may appoint one or more inspectors to act at a meeting of members in connection with determining voting results. Each inspector, before entering upon the discharge of his duties, shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxy appointments and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of the votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties, and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is

unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, upon application by a member, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection B of § 13.1-847, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy. A member who votes by a ballot submitted by electronic transmission is deemed present at the meeting of members.

2007, c. 925; 2010, c. 171; 2015, c. 611.

§ 13.1-848. Corporation's acceptance of votes

A. If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer, partner or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. Neither the corporation nor the person authorized to count votes, including an inspector under § 13.1-847.1, who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-847 is liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

1985, c. 522; 2007, c. 925; 2015, c. 611.

§ 13.1-849. Quorum and voting requirements for voting groups

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the

adoption of any matter voted upon by the members, unless a greater proportion is required by this Act or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

B. Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § 13.1-852.

Code 1950, § 13.1-219; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-850. Action by single and multiple voting groups

A. If the articles of incorporation or this Act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 13.1-849.

B. If the articles of incorporation or this Act provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 13.1-849. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

1985, c. 522; 2007, c. 925.

§ 13.1-851. Change in quorum or voting requirements

A. The articles of incorporation may provide for a lesser or greater quorum requirement for members or voting groups of members than required by this chapter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

Code 1950, § 13.1-218; 1956, c. 428; 1985, c. 522; 1986, c. 321.

§ 13.1-852. Voting for directors; cumulative voting

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

B. Members do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of members are entitled to cumulate their votes for directors" or words of similar import means that the members designated are entitled to multiply the number of votes they are entitled to cast by

the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 48 hours before the time set for the meeting of the member's intent to cumulate his votes during the meeting. If one member gives such a notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. 925.

Article 7.1 - MEMBER OR DIRECTOR AGREEMENTS

§ 13.1-852.1. Member or director agreements

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection A of § 13.1-872, one or more officers, or restricts the discretion or powers of the board of directors or any one or more officers;

2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies;

4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;

5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;

6. Requires dissolution of the corporation at the request of one or more of the members, or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. Valid for an unlimited duration, if the agreement is set forth in the articles of incorporation or bylaws, unless the agreement shall be otherwise amended by the members or the directors, as the case may be; or if the agreement is set forth in a written agreement, as set forth in the agreement except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than 300 members of record. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without member action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for membership interests may act as members or directors with respect to an agreement authorized by this section if no members have been elected or appointed or, in the case of a corporation that has no members, no directors are elected or holding office when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. An agreement among the members or the directors of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the members, the directors, and the corporation.

1991, c. 132; 1997, c. 217; 2007, c. 925; 2015, c. 611.

§ 13.1-852.2. Voting agreements

A. Two or more members entitled to vote may provide for the manner in which they will vote by signing an agreement for that purpose.

B. A voting agreement created under this section is specifically enforceable.

2007, c. 925.

Article 8 - DIRECTORS AND OFFICERS

§ 13.1-853. Requirement for and duties of board of directors

A. Except as provided in an agreement authorized by § 13.1-852.1, each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized by § 13.1-852.1.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925.

§ 13.1-854. Qualification of directors

The articles of incorporation or bylaws may prescribe qualifications for directors. Unless the articles of incorporation or bylaws so prescribe, a director need not be a resident of the Commonwealth or a member of the corporation.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925.

§ 13.1-855. Number and election of directors

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-858.

E. No individual shall be named or elected as a director without his prior consent.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925; 2010, c. 171.

§ 13.1-856. Election of directors by certain classes of members

If the articles of incorporation authorize dividing the members into classes, the articles may also authorize the election of all or a specified number of directors by the members of one or more authorized classes. Each class entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

1985, c. 522.

§ 13.1-857. Terms of directors generally

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. The terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected, or if there are no members or the corporation's members do not have voting rights, at the end of such other period as may be specified in the articles of incorporation.

C. The terms of all other directors expire at the next annual meeting of members following the directors' election unless their terms are staggered under § 13.1-858 or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

D. A decrease in the number of directors does not shorten an incumbent director's term.

E. The term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

F. Except in the case of ex-officio directors, despite the expiration of a director's term, a director continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors, if any.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1986, c. 529; 2004, c. 303; 2007, c. 925.

§ 13.1-858. Staggered terms of directors

A. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into groups, and the terms of office of the several groups need not be uniform.

B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual members' meeting.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 140; 1989, c. 419; 2007, c. 925.

§ 13.1-859. Resignation of directors

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the board of directors may fill the pending vacancy before the effective time if the board of directors provides that the successor does not take office until the effective time.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

1985, c. 522; 1991, c. 124; 2007, c. 925.

§ 13.1-860. Removal of directors

A. The members may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to

be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members or no members with voting rights, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 177; 1991, c. 124; 2007, c. 925.

§ 13.1-861. Judicial review of elections

Any member or director aggrieved by an election of directors may, after reasonable notice to the corporation and each director whose election is contested, apply for relief to the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located. The court shall proceed forthwith in a summary way to hear and decide the issues and thereupon to determine the persons elected or order a new election or grant such other relief as may be equitable. Pending decision, the court may require the production of any information and may by order restrain any person from exercising the powers of a director if such relief is equitable.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-862. Vacancy on board of directors

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The members may fill the vacancy;

2. The board of directors may fill the vacancy; or

3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § 13.1-859 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

Code 1950, § 13.1-222; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2007, c. 925.

§ 13.1-863. Compensation of directors

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

1985, c. 522.

§ 13.1-864. Meetings of the board of directors

A. The board of directors may hold regular or special meetings in or out of the Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Code 1950, § 13.1-225; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-865. Action without meeting of board of directors

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation. However, if expressly authorized in the articles of incorporation, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting by fewer than all of the directors, but not less than the greater of (i) a majority of the directors in office or (ii) a quorum of the directors as required by the articles of incorporation or bylaws, if the requisite number of directors sign a consent describing the action to be taken and deliver it to the corporation, except such action shall not be permitted to be taken without a meeting if any director objects to the taking of such proposed action. To be effective, such objection shall have been delivered to the corporation no later than ten business days after notice of the proposed action is given. The corporation shall promptly notify each director of any such objection. Any actions taken without a meeting shall comply with any voting requirements established in the articles of incorporation or bylaws. If corporate action is to be taken under this subsection by fewer than all of the directors, the corporation shall give written notice of the proposed corporate action, not less than 10 business days before the action is taken, or such longer period as may be required by the articles of incorporation or bylaws, to all directors. The notice shall contain or be accompanied by a description of the action to be taken. Notwithstanding any provision of this subsection, corporate action may not be taken by fewer than all of the directors without a meeting if the action also requires adoption by or approval of the members.

B. Action taken under this section is effective when the last director, or the last director sufficient to satisfy the requirements of subsection A if action by fewer than all of the directors is authorized, signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by the requisite number of directors.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

1985, c. 522; 2007, c. 925; 2015, c. 611; 2016, c. 382.

§ 13.1-866. Notice of board of directors' meetings

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

1985, c. 522; 2002, c. 285; 2007, c. 925; 2010, c. 171.

§ 13.1-867. Waiver of notice by director

A. A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival,

objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

1985, c. 522; 2007, c. 925.

§ 13.1-868. Quorum and voting by directors

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, or unless otherwise specifically provided in this Act, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or

2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or

2. He votes against, or abstains from, the action taken.

E. Except as provided in § 13.1-852.1, a director shall not vote by proxy.

F. Whenever this Act requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 1992, c. 471; 2007, c. 925.

§ 13.1-869. Committees

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § 13.1-868.

C. Sections 13.1-864 through 13.1-868, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 13.1-853, except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members;

2. Fill vacancies on the board or on any of its committees;

3. Amend the articles of incorporation pursuant to § 13.1-885;

4. Adopt, amend, or repeal the bylaws; or

5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 13.1-870.

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

Code 1950, § 13.1-224; 1956, c. 428; 1975, c. 500; 1977, c. 435; 1985, c. 522; 2007, c. 925.

§ 13.1-870. General standards of conduct for directors

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless a director has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which the director is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

1985, c. 522; 2007, c. 925.

§ 13.1-870.1. Limitation on liability of officers and directors; exception

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) $100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501(c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the corporation.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E.1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, "community association" shall mean a corporation incorporated under this Act that owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association.

4. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the community association.

1987, cc. 59, 257; 1988, c. 561; 1989, c. 422; 2007, c. 925; 2011, cc. 693, 704.

§ 13.1-870.2. Limitation on liability of officers and directors; additional exception

A. As used in this section, "community association" shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the community association.

1989, c. 422; 2007, c. 925; 2011, cc. 693, 704.

§ 13.1-871. Director conflict of interests

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;

2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or

3. The transaction was fair to the corporation.

B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. The votes controlled by a director who is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The director's votes, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-871.1. Business opportunities

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction; or

2. Members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2007, c. 925.

§ 13.1-872. Required officers

A. Except as provided in an agreement authorized by § 13.1-852.1, a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-804.

B. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.

Code 1950, § 13.1-226; 1956, c. 428; 1982, c. 372; 1985, c. 522; 1994, c. 189; 2007, c. 925.

§ 13.1-873. Duties of officers

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

1985, c. 522.

§ 13.1-874. Resignation and removal of officers

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

Code 1950, § 13.1-227; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, c. 124; 2007, c. 925.

Article 9 - INDEMNIFICATION

§ 13.1-875. Definitions

In this article:

"Corporation" includes any domestic corporation and any domestic or foreign predecessor entity of a domestic corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if such person's duties to the corporation also impose duties on, or otherwise involve services by, such person to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means, (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an officer, as contemplated in § 13.1-881, the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

1985, c. 522; 2007, c. 925; 2009, c. 587.

§ 13.1-876. Authority to indemnify

A. Except as provided in subsection D, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the director:

1. Conducted himself in good faith;

2. Believed:

a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

b. In all other cases, that his conduct was at least not opposed to its best interests; and

3. In the case of any criminal proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision A 2 b.

C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

D. Unless ordered by a court under subsection C of § 13.1-879.1, a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 13.1-877. Mandatory indemnification

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.

§ 13.1-878. Advance for expenses

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under § 13.1-877 and it is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard of conduct.

B. The undertaking required by subsection A shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made by:

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as disinterested directors may participate; or

2. The members, but any membership interest under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925; 2010, c. 171; 2015, c. 611.

§ 13.1-879. Repealed

Repealed by Acts 1987, cc. 59, 257.

§ 13.1-879.1. Court orders for advances, reimbursement or indemnification

A. An individual who is made a party to a proceeding because he is a director of the corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses, or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances, reimbursement, or both, for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of the director's reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its members, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances, reimbursement, or both, nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its members, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

1987, cc. 59, 257; 2007, c. 925.

§ 13.1-880. Determination and authorization of indemnification

A. A corporation may not indemnify a director under § 13.1-876 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in § 13.1-876.

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the members, but membership interests under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision B 2 to select counsel.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 13.1-881. Indemnification of officers

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation is entitled to mandatory indemnification under § 13.1-877, and is entitled to apply for court-ordered indemnification under § 13.1-879.1, in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer of the corporation to the same extent as to a director.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 13.1-882. Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by such

person in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify him against the same liability under § 13.1-876 or 13.1-877.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 13.1-883. Application of article

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity permitted or mandated by this article. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of directors or members, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § 13.1-876 and advance funds to pay for or reimburse expenses in accordance with § 13.1-878. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of § 13.1-878 and subsection C of § 13.1-880.

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director or officer that may be authorized by the articles of incorporation or any bylaw made by the members or any resolution adopted, before or after the event, by the members, except an indemnity against (i) such person's willful misconduct, or (ii) a knowing violation of the criminal law. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § 13.1-878 except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § 13.1-876. Unless the articles of incorporation, or any such bylaw or resolution expressly provides otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § 13.1-880. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. The provisions of this article and Article 8 (§ 13.1-853 et seq.) of this Act shall apply to the same extent to any cooperative organized under the Code of Virginia.

D. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

F. This article does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent who is not a director or officer.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561; 2007, c. 925; 2010, c. 171.

Article 10 - AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

§ 13.1-884. Authority to amend articles of incorporation

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, purpose, or duration of the corporation.

Code 1950, § 13.1-235; 1956, c. 428; 1985, c. 522.

§ 13.1-885. Amendment of articles of incorporation by directors

A. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;

2. To delete the name of the initial registered agent or the address of the initial registered office, if a statement of change described in § 13.1-834 is on file with the Commission;

3. To add, delete, or change a geographic attribution for the name; or

4. To make any other change expressly permitted by this Act to be made without member action.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. 925; 2015, c. 623.

§ 13.1-886. Amendment of articles of incorporation by directors and members

A. Where there are members having voting rights, except where member approval of an amendment of the articles of incorporation is not required by this Act, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors;

2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and

3. The members entitled to vote on the amendment shall approve the amendment as provided in subsection D.

B. The board of directors may condition its submission of the proposed amendment on any basis.

C. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

D. Unless this Act or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. 925.

§ 13.1-887. Voting on amendments by voting groups

The articles of incorporation may provide that members of a class are entitled to vote as a separate voting group on specified amendments of the articles of incorporation.

1985, c. 522.

§ 13.1-887.1. Amendment prior to organization

When a corporation has not yet completed its organization, its board of directors or incorporators, in the event that there is no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

2002, c. 607; 2007, c. 925.

§ 13.1-888. Articles of amendment

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;

2. The text of each amendment adopted or the information required by subdivision L 5 of § 13.1-804;

3. The date of each amendment's adoption;

4. If an amendment was adopted by the incorporators or the board of directors without member approval, a statement that the amendment was duly approved by the vote of at least two-thirds of the directors in office or by a majority of the incorporators, as the case may be, including the reason member and, if applicable, director approval was not required;

5. If an amendment was approved by the members, either:

a. A statement that the amendment was adopted by unanimous consent of the members; or

b. A statement that the amendment was proposed by the board of directors and submitted to the members in accordance with this Act and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the amendment; and

(2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13-226, 13-227, 13.1-237, 13.1-238; 1956, c. 428; 1966, c. 218; 1975, c. 500; 1985, c. 522; 2002, c. 607; 2007, c. 925; 2012, c. 130.

§ 13.1-889. Restated articles of incorporation

A. A corporation's board of directors may restate its articles of incorporation at any time with or without member approval.

B. The restatement may include one or more new amendments to the articles. If the restatement includes a new amendment requiring member approval, it shall be adopted and approved as provided in § 13.1-886. If the restatement includes an amendment that does not require member approval, it shall be adopted as provided in § 13.1-885.

C. If the board of directors submits a restatement for member approval, the corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth:

1. The name of the corporation immediately prior to restatement;

2. Whether the restatement contains a new amendment to the articles;

3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;

4. Information required by subdivision L 5 of § 13.1-804;

5. The date of the restatement's adoption;

6. If the restatement does not contain a new amendment to the articles, that the board of directors adopted the restatement;

7. If the restatement contains a new amendment to the articles not requiring member approval, the information required by subdivision A 4 of § 13.1-888; and

8. If the restatement contains a new amendment to the articles requiring member approval, the information required by subdivision A 5 of § 13.1-888.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective the restated articles of incorporation or amended and restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

1985, c. 522; 2002, c. 607; 2007, c. 925.

§ 13.1-890. Repealed

Repealed by Acts 2007, c. 925, cl. 2.

§ 13.1-891. Effect of amendment of articles of incorporation

An amendment to the articles of incorporation does not affect a cause of action existing in favor of or against the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Code 1950, § 13.1-239; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-892. Amendment of bylaws by board of directors or members

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or § 13.1-893 reserves that power exclusively to the members; or

2. The members in repealing, adopting, or amending a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

1985, c. 522; 2007, c. 925.

§ 13.1-893. Bylaw provisions increasing quorum or voting requirements for directors

A. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members, unless the bylaws otherwise provide; or

2. If adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall be effective only if it meets the quorum requirement and is adopted by the vote required to take action under the quorum and voting requirement then in effect.

1985, c. 522; 2007, c. 925.

Article 11 - MERGER

§ 13.1-893.1. Definitions

As used in this article:

"Merger" means a business combination pursuant to § 13.1-894.

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

2007, c. 925; 2009, c. 216.

§ 13.1-894. Merger

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this chapter. When a domestic corporation is the survivor of a merger with a domestic stock corporation, it may become, pursuant to subdivision C 5, a domestic stock corporation, provided that the only parties to the merger are domestic corporations and domestic stock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation or may be created pursuant to the terms of the plan of merger only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the membership interests of each merging domestic or foreign corporation and eligible interests of each domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign corporation or stock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-804.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the members of a domestic corporation that is a party to the merger are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such members to change any of the following unless such amendment is approved by the members:

1. The amount or kind of membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other prop-

erty to be received under the plan by the members of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by subsection B of § 13.1-885; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

Code 1950, § 13.1-240; 1956, c. 428; 1985, c. 522; 2007, c. 925; 2008, c. 509; 2015, c. 611.

§ 13.1-895. Action on plan of merger

A. In the case of a domestic corporation that is a party to a merger, where the members of any merging corporation have voting rights the plan of merger shall be adopted by the board of directors. Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit the plan to the members for their approval.

The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

B. The board of directors may condition its submission of the plan of merger to the members on any basis.

C. If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation or the board of directors acting pursuant to subsection B, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide

for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. On a plan of merger by each class of members:

a. Whose membership interests are to be converted under the plan of merger into membership interests in a different domestic or foreign corporation, or eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing; or

b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the articles of incorporation, would require action by separate voting groups under § 13.1-887.

2. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a plan of merger is not required if:

1. The corporation will survive the merger;

2. Except for amendments permitted by subsection B of § 13.1-885, its articles of incorporation will not be changed; and

3. Each person who is a member of the corporation immediately before the effective time of the merger will retain the same membership interest with identical designation, preferences, limitations, and rights immediately after the effective time of the merger.

G. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

H. If as a result of a merger one or more members of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger shall require the execution by each member of a separate written consent to become subject to such owner liability.

Code 1950, § 13.1-242; 1956, c. 428; 1985, c. 522; 2002, c. 607; 2007, c. 925; 2015, c. 611.

§ 13.1-896. Articles of merger

A. After a plan of merger has been adopted and approved as required by this Act, articles of merger shall be executed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger, the names of the parties to the merger, and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;

2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

3. The date the plan of merger was adopted by each domestic corporation that was a party to the merger;

4. If the plan of merger required approval by the members of a domestic corporation that was a party to the merger, either:

a. A statement that the plan was approved by the unanimous consent of the members; or

b. A statement that the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:

(1) The designation of and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

5. If the plan of merger was adopted by the directors without approval by the members of a domestic corporation that was a party to the merger, a statement that the plan of merger was duly approved by the vote of a majority of the directors in office, including the reason member approval was not required; and

6. As to each foreign corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger shall be filed with the Commission by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Code 1950, §§ 13.1-243, 13.1-244; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2000, c. 53; 2003, c. 597; 2007, c. 925; 2009, c. 216.

§ 13.1-897. Effect of merger

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;

2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;

3. Property owned by and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

4. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;

5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

6. The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;

7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and

8. The membership interests of each domestic or foreign corporation that is a party to the merger and the eligible interests in an eligible entity that is a party to the merger that are to be converted under the plan of merger into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such membership interests or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under the organic law of the eligible entity.

B. Upon a merger's becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger.

C. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States, or another country, shall also be a domestic corporation of the Commonwealth.

Code 1950, § 13.1-245; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-897.1. Abandonment of a merger

A. Unless otherwise provided in a plan of merger or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger has become effective, the merger may be abandoned by a domestic corporation that is a party thereto without action by members in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger.

B. If a merger is abandoned under subsection A after articles of merger have been filed with the Commission but before the certificate of merger has become effective, a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

2007, c. 925.

§§ 13.1-898, 13.1-898.1. Repealed
Repealed by Acts 2007, c. 925, cl. 2.

Article 11.1 - DOMESTICATION

§ 13.1-898.2. Domestication
A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated;

2. The terms and conditions of the domestication; and

3. For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § 13.1-819 as they will be in effect upon consummation of the domestication.

D. The plan of domestication may include any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. Where a plan of domestication is required to be submitted to the members for their approval, an amendment made subsequent to the submission of the plan to the members of the corporation shall not alter or change any of the terms or conditions of the plan if such alteration or change would adversely affect the members of any class of the corporation.

2003, c. 374; 2007, c. 925; 2012, c. 130.

§ 13.1-898.3. Action on plan of domestication by a domestic corporation

A. When the members of a domestic corporation have voting rights, a plan of domestication shall be adopted in the following manner:

1. The board of directors of the corporation shall adopt the plan of domestication.

2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.

3. For a plan of domestication to be approved:

a. The board of directors shall recommend the plan to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and

b. The members shall approve the plan as provided in subdivision 6 of this subsection.

4. The board of directors may condition its submission of the plan of domestication to the members on any basis.

5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842 at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6. Unless this Act or the board of directors, acting pursuant to subdivision 4 of this subsection, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subdivision or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

7. Voting by a class of members as a separate voting group is required on a plan of domestication if the plan contains a provision that, if contained in a proposed amendment to articles of

incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under § 13.1-887.

B. When a domestic corporation has no members, or no members have voting rights, a plan of domestication shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

2003, c. 374; 2007, c. 925.

§ 13.1-898.4. Articles of domestication

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-829;

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § 13.1-806.

D. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this Act.

E. If the foreign corporation is authorized to transact business in the Commonwealth under Article 14 (§ 13.1-919 et seq.), its certificate of authority shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

2003, c. 374; 2007, c. 925; 2012, c. 130.

§ 13.1-898.5. Surrender of articles of incorporation upon domestication

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of

another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;

2. The jurisdiction in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;

3. The plan of domestication;

4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of the Commonwealth;

5. Where the members of the corporation have voting rights, a statement:

a. That the plan was adopted by the unanimous consent of the members; or

b. That the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

6. Where the corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office;

7. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision 7; and

9. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-921 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.

2003, c. 374; 2007, c. 925; 2015, c. 623.

§ 13.1-898.6. Effect of domestication

A. When a foreign corporation's certificate of domestication in the Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;

2. The liabilities remain the liabilities of the corporation;

3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;

4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

a. Be incorporated under the laws of the Commonwealth for all purposes;

b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and

c. Have been incorporated on the date it was originally incorporated or organized.

B. Any member or director of a foreign corporation that domesticates into the Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

2003, c. 374; 2007, c. 925.

§ 13.1-898.7. Abandonment of domestication

A. Unless otherwise provided in a plan of domestication of a domestic corporation to become a foreign corporation, after the plan has been approved and adopted as required by this article, and at any time before the certificate of incorporation surrender has become effective, the domestication may be abandoned by the domestic corporation without action by its members in accordance with any procedures set forth in the plan of domestication or, if no such procedures are set forth in the plan of domestication, in the manner determined by the board of directors.

B. If a domestication is abandoned as provided under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign corporation is incorporated after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective time and date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

2003, c. 374; 2007, c. 925; 2015, c. 623.

Article 12 - SALE OF ASSETS

§ 13.1-899. Sale of assets in regular course of business

Unless the articles of incorporation provide otherwise, no approval of the members of a corporation entitled to vote is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

2. To mortgage, pledge or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of business; or

3. To transfer any or all of the corporation's assets to one or more domestic or foreign eligible entities all of whose eligible interests are owned by the corporation.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-900. Sale of assets other than in regular course of business

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its assets, with or without the good will, otherwise than in the usual and regular course of business,

on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its members approve the proposed transaction.

B. Where there are members having voting rights, a disposition, other than a disposition described in § 13.1-899, shall be authorized in the following manner:

1. The board of directors shall adopt a resolution authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also submit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

2. The board of directors may condition its submission of the proposed transaction on any basis.

3. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the disposition will be effected. If only a summary of the agreement is sent to members, the corporation shall also send a copy of the agreement to any member who requests it.

4. Unless the board of directors, acting pursuant to subdivision 2 of this subsection, requires a greater vote, the disposition to be authorized shall be approved by more than two-thirds of all the votes cast on the disposition at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

5. Unless the parties to the disposition have agreed otherwise, after a disposition of assets has been approved by members, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further member action in accordance with the procedure set forth in the resolution proposing the disposition or, if none is set forth, by the board of directors.

C. For a transaction to be authorized where there are no members, or no members having voting rights, the proposed transaction shall be authorized upon receiving the vote of a majority of the directors in office.

D. A disposition of assets in the course of dissolution under Article 13 (§ 13.1-902 et seq.) is not governed by this section.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 1991, c. 110; 2007, c. 925.

§ 13.1-901. Sale of certain real property by incorporated educational institutions

In all cases where an incorporated educational institution, or its board of directors, or trustees, for its benefit, owns or holds more than 1,000 acres of land in one or more tracts outside of a city or incorporated town, such board of trustees or directors may, notwithstanding any provision in its charter, or in the deed, will or muniment of title under which such real estate is held, by a majority vote of all of the members of such board, sell and convey all of such real estate in excess of 1,000 acres, the portion to be sold to embrace both land and buildings as may be determined by the board.

Code 1950, § 13.1-246.1; 1973, c. 476; 1985, c. 522.

Article 13 - DISSOLUTION

§ 13.1-902. Dissolution by directors and members

A. Where there are members having voting rights, a corporation's board of directors may propose dissolution for submission to the members.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, dissolution to be authorized shall have been approved by more than two-thirds of all the votes cast on the proposal to dissolve at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-903. Dissolution by directors

Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522.

§ 13.1-904. Articles of dissolution

A. At any time after dissolution is approved, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation.

2. The date dissolution was authorized.

3. Where there are members having voting rights, either (i) a statement that dissolution was authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was submitted to the members by the board of directors in accordance with this article and a statement of (a) the existence of a quorum of each voting group entitled to vote separately on dissolution and (b) either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.

4. Where there are no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the dissolution was authorized and a statement of the fact that dissolution was authorized by the vote of a majority of the directors in office.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all required fees and taxes imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ 13.1-902 through 13.1-908.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective; the term includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Code 1950, §§ 13.1-252, 13.1-253; 1956, c. 428; 1974, c. 452; 1975, c. 500; 1985, c. 522; 2003, c. 596; 2007, c. 925.

§ 13.1-905. Revocation of dissolution

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, where members have votes, that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by filing with the Commission articles of revocation of dissolution that set forth:

1. The name of the corporation;

2. The effective date of the dissolution that was revoked;

3. The date that the revocation of dissolution was authorized;

4. If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

5. If member action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § 13.1-904.

D. If the Commission finds that the articles of revocation of dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Code 1950, § 13.1-251; 1956, c. 428; 1985, c. 522.

§ 13.1-906. Effect of dissolution

A. A dissolved corporation continues its corporate existence but may not transact any business except that appropriate to wind up and liquidate its business and affairs, including:

1. Collecting its assets;

2. Disposing of its properties;

3. Discharging or making provision for discharging its liabilities;

4. Distributing its remaining property; and

5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;

2. Subject its directors to standards of conduct different from those prescribed in § 13.1-870;

3. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

4. Prevent commencement of a proceeding by or against the corporation in its corporate name;

5. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

6. Terminate the authority of the registered agent of the corporation.

1985, c. 522; 2007, c. 925.

§ 13.1-907. Distribution and plan of distribution of assets

A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act or as a court may direct;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether issuing shares or not, as may be specified in a plan of distribution adopted as provided in this Act or as a court may direct.

B. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution. A plan shall be adopted in accordance with the procedures established in § 13.1-902 or 13.1-903, as the case may be.

Code 1950, §§ 13-237, 13.1-249, 13.1-250; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-908. Known claims against dissolved corporation

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim is required to be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim to the dissolved corporation.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

1985, c. 522; 2007, c. 925.

§ 13.1-908.1. Other claims against dissolved corporation

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § 13.1-908 is not treated as a claim for

purposes of § 13.1-908 and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address to which the claim may be sent; and

2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-908;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

3. A claimant whose claim pursuant to subsection D of § 13.1-908 is not treated as a claim for purposes of § 13.1-908.

D. A claim that is not barred by subsection C of § 13.1-908 or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-908.2, if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

2007, c. 925; 2015, c. 611.

§ 13.1-908.2. Court proceedings

A. A dissolved corporation that has published a notice under § 13.1-908.1 may file an application with the circuit court of the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not

been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-908.1.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 13.1-908, and such claims may not be enforced against a member who received assets in liquidation.

2007, c. 925.

§ 13.1-908.3. Director duties

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to members after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § 13.1-908, 13.1-908.1, or 13.1-908.2 shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § 13.1-908, 13.1-908.1, or 13.1-908.2.

2007, c. 925.

§ 13.1-909. Grounds for judicial dissolution

A. The circuit court in any city or county described in subsection C may dissolve a corporation:

1. In a proceeding by a member or director if it is established that:

a. The directors are deadlocked in the management of the corporate affairs and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the members generally, because of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights;

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;

d. The corporate assets are being misapplied or wasted; or

e. The corporation is unable to carry out its purposes;

2. In a proceeding by a creditor if it is established that:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

4. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by members on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the members but it is in their interest that the assets and business be liquidated; or

5. When the Commission has instituted a proceeding for the involuntary termination of a corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its business and affairs should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this article upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or members parties to a proceeding to be brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Code 1950, §§ 13.1-257, 13.1-260, 13.1-261; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-910. Receivership or custodianship

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation, authorized to transact business in the Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in his own name as receiver of the corporation in all courts of the Commonwealth; and

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its members and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its members, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Code 1950, §§ 13.1-258, 13.1-259; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-911. Decree of dissolution

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § 13.1-909 exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with §§ 13.1-906 and 13.1-907 and the notification of claimants in accordance with §§ 13.1-908, 13.1-908.1, and 13.1-908.2. When all of the assets of the corporation have been distributed, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

Code 1950, §§ 13.1-262, 13.1-263; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-912. Articles of termination of corporate existence

A. When a corporation has distributed all of its assets and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;

2. That all the assets of the corporation have been distributed; and

3. That the dissolution of the corporation has not been revoked.

B. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

C. The statement "that all the assets of the corporation have been distributed" means that the corporation has divested itself of all its assets by the payment of claims or by assignment to a trustee or trustees as directed by § 13.1-907. If any certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55-210.7, pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55-210.12 except subdivision B 4 of that section.

1985, c. 522; 1986, c. 529; 2004, c. 162; 2007, c. 925.

§ 13.1-913. Termination of corporate existence by incorporators or initial directors

A majority of the initial directors or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not commenced business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;

2. That the corporation has not commenced business;

3. That no debt of the corporation remains unpaid;

4. That the net assets of the corporation remaining after winding up have been distributed; and

5. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

1985, c. 522; 1986, c. 234; 2007, c. 925.

§ 13.1-914. Automatic termination of corporate existence

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-835 fails to file a statement of change pursuant to § 13.1-834 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) pay, satisfy, and discharge its liabilities and obligations, and (iii) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Code 1950, § 13.1-254; 1956, c. 428; 1970, c. 4; 1980, c. 185; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52; 2007, c. 925; 2010, c. 753.

§ 13.1-915. Involuntary termination of corporate existence

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in the Commonwealth as required by law; (iii) has failed to file any document required by this Act to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the

remainder of its assets in accordance with § 13.1-907. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

Code 1950, § 13.1-256; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1976, c. 350; 1985, c. 522; 1991, c. 310; 2007, c. 925; 2008, cc. 588, 770.

§ 13.1-916. Reinstatement of a corporation that has ceased to exist

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution contains no provision of reinstatement of corporate existence.

B. To have its corporate existence reinstated, the corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $10;

3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been terminated;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. If the name of the corporation does not comply with the provisions of § 13.1-829 at the time of reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a name that satisfies the provisions of § 13.1-829, with the fee required by this chapter for the filing of articles of amendment; and

6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-834.

C. If the corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement of corporate existence. Upon entry of the order of reinstatement, the corporate existence shall be deemed to have continued from the date of termination as if termination had never occurred, and any liability incurred by the corporation or a director, officer, or other agent after the termination and before the reinstatement is determined as if the termination of the corporation's existence had never occurred.

Code 1950, § 13.1-255; 1956, c. 428; 1958, c. 564; 1976, c. 350; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. 601; 2005, c. 379; 2006, c. 663; 2007, c. 925; 2015, c. 623.

§ 13.1-917. Survival of remedy after termination of corporate existence

The termination of corporate existence shall not take away or impair any remedy available to or against the corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Code 1950, § 13.1-264; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-918. Repealed

Repealed by Acts 1988, c. 405.

Article 14 - FOREIGN CORPORATIONS

§ 13.1-919. Authority to transact business required

A. A foreign corporation may not transact business in the Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

3. Maintaining bank accounts;

4. Selling through independent contractors;

5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Commonwealth before they become contracts;

6. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

7. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

8. Owning, without more, real or personal property;

9. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

10. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution; or

11. Serving, without more, as a general partner of or as a partner in a partnership that is a general partner of a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

C. The list of activities in subsection B is not exhaustive.

Code 1950, §§ 13.1-265 to 13.1-265.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522; 2007, c. 925.

§ 13.1-920. Consequences of transacting business without authority

A. A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.

B. Notwithstanding subsections A and C, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Commonwealth.

C. The successor to a foreign corporation that transacted business in the Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

D. If a foreign corporation transacts business in the Commonwealth without a certificate of authority, each officer, director, and employee who does any of such business in the Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than $500 and not more than $5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after the corporation and the individual have been given notice and an opportunity to be heard.

E. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in the Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation doing such business, or, if none can be found, on the clerk of the Commission or on the corporation in any other manner permitted by law. If any foreign corporation transacts business in the Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service upon the clerk shall be made in accordance with § 12.1-19.1.

Code 1950, §§ 13-218, 13.1-281; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672; 2007, c. 925.

§ 13.1-921. Application for certificate of authority

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § 13.1-924 from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-924;

2. The name of the state or other jurisdiction under whose laws it is incorporated, and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The date of incorporation and period of duration;

4. The street address of the foreign corporation's principal office;

5. The address of the proposed registered office of the foreign corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; and

6. The names and usual business addresses of the current directors and principal officers of the foreign corporation.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

C. If the Commission finds that the application complies with the requirements of law, and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

Code 1950, §§ 13.1-269, 13.1-270; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. 348; 2001, cc. 517, 541; 2002, c. 607; 2004, c. 274; 2007, c. 925; 2015, c. 623.

§ 13.1-922. Amended certificate of authority

A. A foreign corporation authorized to transact business in the Commonwealth shall obtain an amended certificate of authority from the Commission:

1. If it changes its corporate name or the state or other jurisdiction of its incorporation; or

2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § 13.1-924.

B. The requirements of § 13.1-921 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

Code 1950, §§ 13.1-275 to 13.1-277; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1986, c. 571; 1987, c. 431; 2007, c. 925; 2015, c. 623.

§ 13.1-923. Effect of certificate of authority

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in the Commonwealth, subject, however, to the right of the Commonwealth to revoke the certificate as provided in this Act.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in the Commonwealth.

C. This Act does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth.

Code 1950, §§ 13.1-266, 13.1-271; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-924. Corporate name of foreign corporation

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § 13.1-829.

B. If the corporate name of a foreign corporation does not satisfy the requirements of § 13.1-829, to obtain or maintain a certificate of authority to transact business in the Commonwealth, if its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § 13.1-829, if it informs the Commission of the designated name.

Code 1950, §§ 13.1-267, 13.1-268, 13.1-277; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. 592; 2005, c. 379; 2007, c. 925; 2012, c. 63.

§ 13.1-925. Registered office and registered agent of foreign corporation

A. Each foreign corporation authorized to transact business in the Commonwealth shall continuously maintain in the Commonwealth:

1. A registered office, which may be the same as any of its places of business.

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-272; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1994, c. 348; 2000, c. 162; 2001, cc. 517, 541; 2007, c. 925.

§ 13.1-926. Change of registered office or registered agent of a foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-925.

B. A statement of change shall forthwith be filed with the Commission by a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-925.

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-925. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the foreign corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-273; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. 597; 2007, c. 925; 2010, c. 434.

§ 13.1-927. Resignation of registered agent of foreign corporation

A. The registered agent of a foreign corporation may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2007, c. 925; 2010, c. 434.

§ 13.1-928. Service of process on foreign corporation

A. The registered agent of a foreign corporation authorized to transact business in the Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by instrument in writing, acknowledged before a notary public, designate a

natural person or persons in the office of the registered agent upon whom any such process, notice, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth fails to appoint or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Code 1950, §§ 13-214 to 13-217, 13.1-274; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. 517, 541; 2007, c. 925.

§ 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated; however, the filing shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § 13.1-896 contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership, or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it was incorporated and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If a surviving or resulting corporation or limited liability company, business trust, partnership, or

limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth, within such 30 days, deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in the Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

1986, c. 571; 1990, c. 283; 2006, c. 663; 2007, c. 925; 2015, c. 623.

§ 13.1-928.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § 13.1-929; or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. 274.

§ 13.1-929. Withdrawal of foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or other jurisdiction under whose laws it is incorporated;

2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action

as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign corporation may be made in any other manner permitted by law.

Code 1950, §§ 13.1-278, 13.1-278.1; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 529; 1991, c. 672; 2007, c. 925; 2012, c. 130; 2015, c. 623.

§ 13.1-930. Automatic revocation of certificate of authority

A. If any foreign corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due date determined in accordance with subsection A of § 13.1-936.1 of each year.

C. If any foreign corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-927 fails to file a statement of change pursuant to § 13.1-926 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of impending revocation of its certificate of authority. If the foreign corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-279; 1956, c. 428; 1970, c. 4; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52; 2007, c. 925; 2010, c. 753.

§ 13.1-931. Involuntary revocation of certificate of authority

A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this Act to be filed with the Commission;

4. No longer exists under the laws of the state or country of its incorporation; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-280; 1956, c. 428; 1958, c. 506; 1985, c. 522; 1991, c. 672; 1995, c. 76; 2007, c. 925; 2008, cc. 588, 770; 2015, c. 623.

§ 13.1-931.1. Reinstatement of foreign corporation whose certificate of authority has been withdrawn or revoked

A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § 13.1-931.

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $10;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any mergers entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

6. If the name of the foreign corporation does not comply with the provisions of § 13.1-924 at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-924, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-926.

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact business in the Commonwealth.

1987, c. 431; 1988, c. 405; 2004, c. 274; 2007, c. 925; 2015, c. 623.

Article 15 - RECORDS AND REPORTS

§ 13.1-932. Corporate records

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to members referred to in subdivision L 5 of § 13.1-804 regarding facts on which a filed document is dependent;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;

4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

5. All written communications to members generally within the past three years;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-936.

Code 1950, § 13.1-228; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-933. Inspection of records by members

A. Subject to subsection C of § 13.1-934, a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-932 if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B only if:

1. He has been a member of record for at least six months immediately preceding his demand;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records that he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

1985, c. 522; 2007, c. 925.

§ 13.1-934. Scope of inspection right

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under § 13.1-933 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the member.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, and transmission of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision B 3 of § 13.1-933 by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

1985, c. 522; 2007, c. 925.

§ 13.1-935. Court-ordered inspection

A. If a corporation does not allow a member who complies with subsection A of § 13.1-933 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of § 13.1-933 may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order if the member proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

1985, c. 522.

§ 13.1-935.1. Inspection of records by directors

A. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of his duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office or, if none in the Commonwealth, its registered office is located may order inspection and copying of the books, records, and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order

the corporation to reimburse the director for his reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

2007, c. 925.

§ 13.1-936. Annual report of domestic and foreign corporations

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;

2. The address of the registered office of the corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in the Commonwealth at such address; and

3. The names and post office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms prescribed and furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-282, 13.1-283; 1956, c. 428; 1958, c. 418; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1987, c. 2; 1997, c. 216; 2007, c. 925; 2010, c. 753.

§ 13.1-936.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month

next succeeding the month in which it was incorporated or authorized to conduct its affairs in the Commonwealth, and by such date in each year thereafter, an annual registration fee of $25. At the discretion of the Commission, the annual registration fee due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. Each year, the Commission shall ascertain from its records each domestic corporation and each foreign corporation authorized to conduct its affairs in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to conduct its affairs in the Commonwealth and shall assess against each such corporation the annual registration fee herein imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of $10, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

1988, c. 405; 1991, c. 311; 1997, c. 216; 2007, c. 925; 2010, c. 753.

§ 13.1-936.2. Collection of unpaid bills for registration fees

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § 8.01-261.

1988, c. 405.

Article 16 - TRANSITION PROVISIONS

§ 13.1-937. Application to existing corporations

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their members. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

Code 1950, §§ 13.1-203, 13.1-290, 13.1-290.1; 1956, c. 428; 1966, c. 387; 1975, c. 500; 1985, c. 522.

§ 13.1-938. Application to certain social, patriotic and benevolent societies incorporated before year 1900; reports by such societies

The charter of every social, patriotic and benevolent society incorporated by an act of the General Assembly of Virginia prior to the year 1900 for the purpose of perpetuating the memory of men in the military, naval and civil service of the Colonies and of the Continental Congress shall be deemed to have remained, and to be, in full force and effect notwithstanding the provisions of § 13.1-937 or any other statute enacted after January 1, 1950, or regulation pursuant thereto requiring the filing of any report or reports with the Commission. All such reports which under such statutes should have been so filed shall be filed with the Commission on or before August 1, 1986. Such corporation hereafter shall be deemed to hold its charter subject to the provisions of the Constitution of Virginia now in effect, and the laws passed in pursuance thereof.

1985, c. 522.

§ 13.1-939. Saving provision

A. Except as provided in subsection B, the repeal of a statute by this Act does not affect:

1. The operation of the statute or any action taken under it before its repeal;

2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;

3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

Code 1950, § 13.1-292; 1956, c. 428; 1985, c. 522; 2007, c. 925; 2010, c. 171.

§ 13.1-940. Repealed
Repealed by Acts 2015, c. 709, cl. 2.

§ 13.1-941. Repealed
Repealed by Acts 2002, c. 607.

Article 17 - CONVERSION TO A STOCK CORPORATION

§ 13.1-941.01. Conversion to a domestic stock corporation
A domestic corporation may convert to a domestic stock corporation organized under Chapter 9 (§ 13.1-601 et seq.) in accordance with the provisions of this article.

2002, c. 607; 2015, c. 623.

§ 13.1-942. Articles of restatement
A. A corporation converting to a domestic stock corporation shall file with the Commission articles of restatement in accordance with § 13.1-889.

B. In addition to the information required by subsection D of § 13.1-889, if the corporation has one or more classes of members, the articles of restatement shall set forth (i) the manner and basis of converting the membership interests of each class of members of the corporation into shares or other securities, obligations, rights to acquire shares, or other securities, cash, other property, or any combination of the foregoing or (ii) a statement that the membership interests of the members will be canceled without consideration as a result of the corporation's conversion to a domestic stock corporation.

C. The articles of restatement shall set forth the text of the amended and restated articles of incorporation that comply with the requirements of Chapter 9 (§ 13.1-601 et seq.) as they will be in effect immediately upon the consummation of the conversion.

D. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement in accordance with § 13.1-889.

1989, c. 609; 2015, c. 623.

§ 13.1-943. Fees

Upon the filing of the articles of restatement to convert to a domestic stock corporation, in addition to the fees required by § 13.1-816 for filing articles of restatement, a corporation shall also pay a fee equal to that required for a newly chartered stock corporation authorized to issue the same number of shares, as set forth in subsection A of § 13.1-615.1.

1989, c. 609; 2015, c. 623.

§ 13.1-944. Effect of conversion

A. When a conversion under this article becomes effective:

1. The corporation continues its existence as a domestic stock corporation subject to the provisions of Chapter 9 (§ 13.1-601 et seq.);

2. The directors of the corporation continue in office until their terms expire and new directors are elected by the shareholders;

3. The title to all real estate and other property remains in the domestic stock corporation without reversion or impairment;

4. The liabilities remain the liabilities of the domestic stock corporation;

5. A pending proceeding may be continued by or against the domestic stock corporation as if the conversion did not occur;

6. The amended and restated articles of incorporation set forth in the articles of restatement shall constitute the articles of incorporation of the domestic stock corporation;

7. The membership interests, if any, of the corporation are reclassified into shares or other property, or canceled, in accordance with the articles of restatement, and the members of the corporation are entitled only to the rights provided in the articles of restatement;

8. The domestic stock corporation is deemed to:

a. Be a domestic stock corporation for all purposes;

b. Be the same corporation without interruption as the converting corporation that existed prior to the conversion; and

c. Have been incorporated on the date that the converting corporation was originally incorporated; and

9. The corporation shall cease to be a corporation organized under the provisions of this chapter.

B. Any member of a corporation that converts to a domestic stock corporation who, prior to the conversion, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the conversion.

1989, c. 609; 2015, c. 623.

Article 17.1 - CONVERSION TO A LIMITED LIABILITY COMPANY

§ 13.1-944.1. Definitions

In this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § 13.1-803.

"Limited liability company" has the same meaning specified in § 13.1-1002.

"LLC membership interest" has the same meaning as membership interest in § 13.1-1002.

"Member" when used with respect to a corporation has the meaning as specified in § 13.1-803, and when used with respect to a limited liability company has the same meaning specified in § 13.1-1002.

"Membership interest" has the same meaning specified in § 13.1-803.

"Person" has the same meaning specified in § 13.1-803.

"Resulting entity" means the limited liability company that is in existence immediately after consummation of an entity conversion pursuant to this article.

2012, c. 706.

§ 13.1-944.2. Entity conversion

A domestic corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article.

2012, c. 706; 2016, c. 288.

§ 13.1-944.3. Plan of entity conversion

A. To become a domestic limited liability company, a domestic corporation shall adopt a plan of entity conversion setting forth:

1. A statement of the corporation's intention to convert to a limited liability company;

2. The terms and conditions of the conversion, including the manner and basis of converting the membership interests, if any, of the corporation into LLC membership interests of the resulting entity;

3. If the corporation has no members, the designation of each person who is to become a member of the limited liability company upon conversion, provided that no person shall be designated as a member of the resulting entity without the person's prior consent;

4. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and

5. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the corporation, unless the amendment has been approved by the members in the manner set forth in § 13.1-944.4.

2012, c. 706; 2016, c. 288.

§ 13.1-944.4. Action on plan of entity conversion

A. Where the corporation has no members, or no members having voting rights, the plan shall be adopted upon receiving the vote of at least two-thirds of the directors in office.

B. Where there are members of the corporation having voting rights:

1. The plan of entity conversion shall be adopted by the board of directors;

2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors determines that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and

3. The voting members shall approve the plan as provided in subdivision C 3.

C. When a plan of entity conversion is to be approved by the members in accordance with subsection B:

1. The board of directors may condition its submission of the plan of entity conversion to the members on any basis;

2. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan; and

3. Unless this chapter or the board of directors, acting pursuant to subdivision 1, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of

all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

2012, c. 706.

§ 13.1-944.5. Articles of entity conversion

A. After the plan of entity conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which name shall satisfy the requirements of the laws of the Commonwealth;

2. The date on which the corporation was originally incorporated, organized, or formed; its original name, entity type, and jurisdiction of incorporation, organization, or formation; and, for each subsequent change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement:

a. That the plan was adopted by the vote of at least two-thirds of the directors in office, including the reason member approval was not required;

b. That the plan was adopted by the unanimous consent of the members having voting rights; or

c. That the plan was proposed by the board of directors and submitted to the members in accordance with this chapter, and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2012, c. 706; 2015, c. 623; 2016, c. 288.

§ 13.1-944.6. Effect of entity conversion

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities remain the liabilities of the resulting entity;

3. A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur;

4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

5. The membership interests, if any, of the corporation are reclassified into LLC membership interests in accordance with the plan of entity conversion, and the members of the converting entity are entitled only to the rights provided in the plan of entity conversion;

6. The resulting entity is deemed to:

a. Be a limited liability company for all purposes;

b. Be the same entity without interruption as the converting entity that existed before the conversion; and

c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed; and

7. The corporation shall cease to be a corporation when the certificate of entity conversion becomes effective.

B. Any member of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2012, c. 706; 2015, c. 623; 2016, c. 288.

§ 13.1-944.7. Abandonment of entity conversion

A. Unless otherwise provided in a plan of entity conversion of a domestic corporation to become a limited liability company, after the plan has been approved and adopted as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the corporation without action by the members in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan of entity conversion, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate

of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2012, c. 706; 2015, c. 623; 2016, c. 288.

Article 18 - MISCELLANEOUS PROVISIONS

§ 13.1-945. Property title records

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign corporation has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted into a domestic or foreign limited liability company, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

2007, c. 771.

§§ 13.1-946 through 13.1-980. Reserved

Reserved.

Chapter 11 - INDUSTRIAL DEVELOPMENT CORPORATIONS

§ 13.1-981. How chapter cited

This chapter shall be known and may be cited as the "Virginia Industrial Development Corporation Act."

Code 1950, § 13.1-140; 1960, c. 80; 1985, c. 522.

§ 13.1-982. Definitions

As used in this chapter, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

"Board of directors." -- The board of directors of a corporation created under this chapter.

"Commission." -- The State Corporation Commission of Virginia.

"Corporation." -- A Virginia industrial development corporation created under the provisions of this chapter.

"Financial institution." -- Any bank, trust company, savings institution, industrial loan association or insurance company.

"Loan limit." -- For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to a corporation as determined under the provisions of this chapter.

"Member." -- Any financial institution which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter.

Code 1950, § 13.1-141; 1960, c. 80; 1985, c. 522; 1996, c. 77.

§ 13.1-983. Incorporation

An industrial development corporation may be incorporated in the Commonwealth pursuant to the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 of this title, and all the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title not in conflict with or inconsistent with the provisions of this chapter shall apply to such corporation except as hereinafter otherwise provided. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate and promote the business prosperity and economic welfare of the Commonwealth and its citizens; to encourage and assist through financial aid, advice, technical assistance and other appropriate means the location of new businesses and industries and the rehabilitation, improvement and expansion of existing businesses and industries throughout the Commonwealth; and in furtherance of such purposes, to cooperate with the Virginia Economic Development Partnership and with other organizations, public and private.

Code 1950, § 13.1-142; 1960, c. 80; 1984, c. 750; 1985, c. 522; 1996, cc. 590, 598.

§ 13.1-984. Corporate name

Every corporation created under this chapter shall have as part of its corporate name or title the words "Industrial Development."

Code 1950, § 13.1-143; 1960, c. 80; 1985, c. 522.

§ 13.1-985. Governor to approve articles of incorporation

The articles of incorporation shall not be issued by the Commission unless approved by the Governor in writing. Such approval shall not be given by the Governor until he first shall have sought the advice of the Chief Executive Officer of the Virginia Economic Development Partnership.

Code 1950, § 13.1-144; 1960, c. 80; 1985, c. 522; 1996, cc. 590, 598; 2010, c. 869.

§ 13.1-986. How funds may be derived

A corporation created under this chapter may derive funds from the sale of its shares and debentures, from loans from its members on the terms and conditions set forth in this chapter, from any other financial institution or person and from any agency established by the federal government or the Commonwealth of Virginia.

Code 1950, § 13.1-144.1; 1972, c. 693; 1985, c. 522.

§ 13.1-987. Restrictions on powers of corporation

The powers of a corporation shall be subject to the following restrictions:

1. It shall not approve any application for a loan until the applicant shall have shown that he has applied to a financial institution that could lawfully lend the amount of money sought and that the financial institution has refused in writing to make the requested loan.

2. It shall not incur any secondary liability for the debts of others, but may assume primary liability therefor.

3. It shall not give security for any loan made to it unless all loans to it are secured ratably in proportion to unpaid balances due, except that it may give security or priority on loans made to it by any federal agency or instrumentality or by any agency or instrumentality of the Commonwealth of Virginia without securing all loans made to it.

Code 1950, § 13.1-145; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§ 13.1-988. Acquisition, transfer, etc., of securities and shares of corporation

Notwithstanding any other provision of law, any person, corporation, including a public service corporation, financial institution or railroad may acquire, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, notes, debentures, securities or other evidences of indebtedness, or the shares of capital stock of a corporation created hereunder, provided that the amount of capital stock which may be acquired by any member of such corporation shall not exceed ten percent of the loan limit of such member.

Code 1950, § 13.1-146; 1960, c. 80; 1985, c. 522.

§ 13.1-989. Membership in corporation; loans from members

A. Any financial institution is authorized to become a member of a corporation by making application to the board of directors on such form and in such manner as the board of directors may require and membership shall become effective upon acceptance of such application by the board. Membership shall be for the duration of the corporation, provided, however, that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not thereafter be obligated to make any loans to the corporation.

B. Each member shall make loans to the corporation as and when called upon by it to do so. Such loans shall be made upon terms and conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

1. All loans shall be evidenced by transferable instruments of the corporation and shall bear interest at a rate of not less than one-half of one percent in excess of the rate of interest determined by the board of directors to be prevalent commercial banking prime or base rate on unsecured commercial loans as of the date of the loan.

2. If expressly provided in such call, the loan may provide for a rate of interest which fluctuates with the prime or base rate from time to time and which would be subject during the life of the loan to adjustment as of each interest period commencing after the next interest payment date.

3. All loan limits shall be established at the $1000 amount nearest to the amount computed in accordance with the provisions of this section.

4. No loan pursuant to call under this section to a development corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times the amount of its outstanding and unimpaired capital stock, its earned and unimpaired surplus established pursuant to § 13.1-994 and any indebtedness expressly subordinated to loans made pursuant to call under this section.

5. The total amount outstanding at any one time on loans to a development corporation made by any member shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement furnished by such member to state or federal supervisory authorities, as the case may be: two percent of the capital and permanent surplus of banks and trust companies; one-half of one percent of the total outstanding loans made by a savings institution, or $250,000, whichever is less; one percent of the total outstanding loans made by an industrial loan company; one percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one percent of the assets of fire insurance companies.

6. All loan limits shall be recomputed as of January 1 of each even-numbered year, but no member's loan limit shall be increased as the result of such recomputation without the consent of such member.

7. Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The "adjusted loan limit" of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment of such member in capital stock of the corporation at the time of such call.

8. A member of a corporation created under this chapter shall not be a member of more than one such corporation.

Code 1950, § 13.1-147; 1960, c. 80; 1962, c. 159; 1972, c. 693; 1985, c. 522; 1996, c. 77.

§ 13.1-990. Shares and shareholders

Each share of common stock of a corporation shall have a par value of $100, and shall be issued for cash.

Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, for each $1000 of the authorized loan limit of such member as determined under § 13.1-989.

The rights given by Chapter 9 (§ 13.1-601 et seq.) of this title to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created hereunder. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Code 1950, § 13.1-148; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§ 13.1-991. Directors

The business and affairs of a corporation shall be conducted by a board of directors. The number of directors shall be a multiple of three. Two-thirds of the directors shall be elected by the members and one-third shall be elected by the shareholders. Any vacancy in the office of a director elected by the members may be filled by the directors elected by the members and any vacancy in the office of director elected by the shareholders may be filled by the directors elected by the shareholders. The shareholders and members or the directors may by bylaw provide that a quorum of the board of directors for the purpose of transaction of business shall consist of a stated number or percentage of the directors less than a majority of the number of directors fixed by the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed.

Code 1950, § 13.1-149; 1960, c. 80; 1968, c. 254; 1985, c. 522.

§ 13.1-992. Executive committee

The board of directors, by a resolution adopted by a majority of the directors present and constituting a quorum at any meeting, may designate five or more directors to constitute an executive committee which, to the extent provided in such resolution or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors except the authority to approve an amendment to the articles of incorporation or a plan of merger. The executive committee specifically shall have the right to make calls upon the membership under § 13.1-989, unless expressly provided to the contrary by such resolution or bylaw. Such committee shall have the power to fill any vacancy occurring in the board of directors or in the executive committee. Such vacancy shall be filled by the affirmative vote of a majority of the remaining members of the

executive committee, though less than a quorum of the committee, unless expressly provided to the contrary by such resolution or bylaw.

Code 1950, § 13.1-149.1; 1972, c. 693; 1985, c. 522.

§ 13.1-993. Restrictions on amendments to articles of incorporation

No amendment to the articles of incorporation shall be made which increases the obligation of a member to make loans to the corporation or which makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan made by a member to the corporation or which affects the right of a member to withdraw from membership or the voting rights of such member, without the consent of each member who would be affected by such amendment.

Code 1950, § 13.1-150; 1960, c. 80; 1985, c. 522.

§ 13.1-994. Earned surplus

Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus so established shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

Code 1950, § 13.1-151; 1960, c. 80; 1985, c. 522.

§ 13.1-995. Members to have rights of shareholders

The rights given to shareholders under the provisions of §§ 13.1-614, 13.1-624, 13.1-629, 13.1-742 and 13.1-744 shall apply to members as well as to shareholders of a corporation created hereunder.

Code 1950, § 13.1-152; 1960, c. 80; 1985, c. 522.

§ 13.1-996. Corporation not authorized to receive money on deposit; deposit of funds of corporation

No corporation organized under the provisions of this chapter shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by appropriate vote of the board of directors or executive committee.

Code 1950, § 13.1-153; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§ 13.1-997. Books and records

A corporation shall keep, in addition to the books and records required by § 13.1-770, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to shareholders by § 13.1-770.

Code 1950, § 13.1-154; 1960, c. 80; 1985, c. 522.

§ 13.1-998. Credit of Commonwealth not pledged
Under no circumstances is the credit of the Commonwealth pledged herein.

Code 1950, § 13.1-155; 1960, c. 80; 1985, c. 522.

Chapter 12 - VIRGINIA LIMITED LIABILITY COMPANY ACT

Article 1 - GENERAL PROVISIONS

§ 13.1-1000. Short title
This chapter shall be known as the Virginia Limited Liability Company Act.

1991, c. 168 .

§ 13.1-1001. Reservation of power to amend or repeal
The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

1991, c. 168 .

§ 13.1-1001.1. Construction
A. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

B. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408, do not apply to any interest in a limited liability company, including all rights, powers and interests arising under the articles of organization or operating agreement of a limited liability company or this chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the enforcement as a fundamental matter of contract among the members of a limited liability company of any provision of an operating agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code .

C. This chapter shall be construed in furtherance of the policies of giving maximum effect to the principle of freedom of contract and of enforcing operating agreements.

1993, c. 113; 2003, c. 340.

§ 13.1-1002. Definitions
As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. The articles of organization include the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of restatement, amendment, domestication, or merger, the articles of

organization include only the restated articles of organization without the articles of restatement, amendment, domestication, or merger.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

"Domestic business trust" has the same meaning as specified in § 13.1-1201.

"Domestic corporation" has the same meaning as specified in § 13.1-603.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-803.

"Domestic other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of the Commonwealth.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-603.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by the recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) shall have the meaning set forth in that section.

"Eligible interests" means, as to a partnership, partnership interest as specified in § 50-73.79; as to a limited partnership, partnership interest as specified in § 50-73.1; as to a business trust, the beneficial interest of a beneficial owner as specified in § 13.1-1226; as to a stock corporation, shares as specified in § 13.1-603; or, as to a nonstock corporation, membership interest as specified in § 13.1-803.

"Foreign business trust" has the same meaning as specified in § 13.1-1201.

"Foreign corporation" has the same meaning as specified in § 13.1-603.

"Foreign limited liability company" means an entity, excluding a foreign business trust, that is an unincorporated organization that is organized under laws other than the laws of the Commonwealth and that is denominated by that law as a limited liability company, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-803.

"Foreign other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of a state or jurisdiction other than the Commonwealth.

"Foreign partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Foreign stock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-603.

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated organization organized and existing under this chapter, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3 as it existed prior to its repeal, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.1 as it existed prior to its repeal, or that has become a domestic limited liability company of the Commonwealth pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9, Article 17.1 (§ 13.1-944.1 et seq.) of Chapter 10, Article 14 (§ 13.1-1074 et seq.) or Article 15 (§ 13.1-1081 et seq.) of this chapter, or Article 12 (§ 13.1-1264 et seq.) of Chapter 14. A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

"Manager-managed limited liability company" means a limited liability company that is managed by a manager or managers as provided for in its articles of organization or an operating agreement.

"Member" means a person that has been admitted to membership in a limited liability company as provided in § 13.1-1038.1 and that has not ceased to be a member.

"Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

"Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets.

"Non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including a partnership, formed, incorporated, organized, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

"Operating agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business, or a writing or agreement of a limited liability company with one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

"Person" has the same meaning as specified in § 13.1-603.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the limited liability company. The designation of the principal office in the most recent statement of change filed pursuant to § 13.1-1018.1 shall be conclusive for the purpose of this chapter.

"State, " when referring to a part of the United States, includes a state, commonwealth and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1995, c. 168; 1996, c. 265; 1997, c. 190; 2001, c. 548; 2002, cc. 288, 621; 2003, c. 340; 2005, c. 255; 2006, c. 912; 2007, cc. 233, 639; 2009, cc. 450, 763; 2016, c. 288.

§ 13.1-1003. Filing requirements

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign limited liability company:

1. By any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, or has been formed without any managers or members and no members have been admitted, by an organizer;

3. In the case of a foreign limited liability company, by a person who is authorized to sign an amendment to the articles of organization or other constituent documents delivered for filing to the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it is formed; or

4. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

1991, c. 168; 1995, c. 70; 2000, cc. 58, 995; 2003, cc. 340, 379; 2006, c. 748; 2013, c. 17.

§ 13.1-1003.1. Filings with the Commission pursuant to reorganization

A. Notwithstanding anything to the contrary contained in § 13.1-1003, 13.1-1011, 13.1-1014, 13.1-1014.1, 13.1-1050, 13.1-1072, or 13.1-1085, whenever, pursuant to any applicable statute of the United States relating to reorganizations of limited liability companies, a plan of reorganization of a limited liability company has been confirmed by the decree or order of a court of competent jurisdiction, the limited liability company may put into effect and carry out the plan and decrees of the court relative thereto (i) through one or more amendments to the limited liability company's articles of organization containing terms and conditions permitted by this chapter; (ii) through a plan of merger or entity conversion; or (iii) through cancellation, without action by the managers or members, to carry out the plan of reorganization decreed or ordered by the court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall deliver to the Commission for filing articles of amendment, restatement, merger, entity conversion, or cancellation, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the limited liability company;

2. Any provision relating to the amendment or amendments, plan of merger or entity conversion, or cancellation approved by the court;

3. The name of the court and the date of the court's order or decree approving the amendment, plan of merger or entity conversion, or cancellation;

4. The title and case number, if any, of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, restatement, merger, entity conversion, or cancellation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, restatement, merger, entity conversion, or cancellation.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

2016, c. 288.

§ 13.1-1004. Issuance of certificate by Commission; recordation of documents

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a limited liability company shall begin at the time the Commission issues a certificate of organization unless a later date and time are specified as provided by subsection D of this section. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the person(s) forming the limited liability company have been complied with and that the limited liability company has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

D.1. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1 of this subsection, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission, and the Commission, by order, cancels the certificate.

3. Notwithstanding subdivision 1 of this subsection, for purposes of §§ 13.1-1012 and 13.1-1054, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

E. Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited liability company at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited liability company.

1991, c. 168; 1996, c. 265; 2010, c. 703.

§ 13.1-1005. Fees

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be $100:

a. Articles of organization.

b. An application for registration as a foreign limited liability company.

c. Articles of entity conversion to convert a domestic corporation to a limited liability company.

d. Articles of domestication.

2. For filing any one of the following, the fee shall be $25:

a. Articles of amendment.

b. Articles of cancellation.

c. Articles of correction referred to in § 13.1-1011.1, a copy of an amendment or correction referred to in § 13.1-1055, or an amended application for registration referred to in § 13.1-1055, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 13.1-1055.

d. A copy of an instrument of merger of a foreign limited liability company referred to in § 13.1-1060.

e. Articles of merger.

f. A copy of an instrument of entity conversion of a foreign limited liability company holding a certificate of registration to transact business in the Commonwealth.

g. Articles of restatement.

h. Articles of organization surrender.

i. An application for a certificate of cancellation of a foreign limited liability company.

3. For filing any one of the following, the fee shall be $10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, $6 for each certificate.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1995, c. 368; 1998, c. 432; 2001, c. 545; 2002, c. 1; 2003, c. 379; 2004, c. 274; 2005, c. 255; 2006, cc. 748, 912; 2007, c. 810; 2008, c. 108; 2012, c. 130.

§ 13.1-1006. Penalty for signing false documents

A. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Any person who violates the provisions of this section shall be guilty of Class 1 misdemeanor.

1991, c. 168 .

§ 13.1-1007. Unlawful to transact or offer to transact business as a limited liability company unless authorized

It shall be unlawful for any person to transact business in this Commonwealth as a limited liability company or to offer or advertise to transact business in this Commonwealth as a limited liability company unless the alleged limited liability company is either a domestic limited liability company or a foreign limited liability company authorized to transact business in this Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

1991, c. 168; 2013, c. 17.

Article 2 - FORMATION

§ 13.1-1008. Purposes

Every limited liability company formed under this chapter has the purpose of engaging in any lawful business, purpose, or activity, whether or not such business, purpose, or activity is carried on for profit, except as otherwise provided by the law of this Commonwealth, unless a more limited purpose is set forth in the articles of organization.

1991, c. 168; 1992, c. 574; 2002, c. 288; 2004, c. 601.

§ 13.1-1009. Powers

Unless the articles of organization provide otherwise, every limited liability company has perpetual duration and succession in its name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its name;

2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;

5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;

8. To elect and appoint managers, employees and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

9. To pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former managers, members, employees, and agents of the limited liability company or any of its subsidiaries;

10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

11. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the limited liability company;

12. To pay compensation, or to pay additional compensation to any or all managers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;

13. To insure for its benefit the life of any of its managers, members, or employees, to insure the life of any member for the purpose of acquiring at his death the interest owned by such member and to continue such insurance after the relationship terminates;

14. To cease its activities, wind up its affairs, and proceed to cancel its existence;

15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;

16. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or an operating agreement, to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever, and to pay for or reimburse any member or manager or other person for reasonable expenses incurred by such a person who is a party to a proceeding in advance of final disposition of the proceeding;

17. To transact any lawful business that a corporation, partnership, or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership or other business entity; and

18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

1991, c. 168; 2004, c. 601; 2006, c. 912; 2008, c. 108; 2013, c. 17.

§ 13.1-1010. Organizers

One or more persons may act as organizers of a limited liability company by signing and delivering articles of organization to the Commission for filing. An organizer need not be a member of the limited liability company after formation has occurred.

1991, c. 168; 2006, c. 748; 2016, c. 288.

§§ 13.1-1010.1 through 13.1-1010.4. Repealed

Repealed by Acts 2016, c. 288, cl. 2, effective July 1, 2016.

§ 13.1-1011. Articles of organization

A. The articles of organization shall set forth:

1. A name for the limited liability company that satisfies the requirements of § 13.1-1012;

2. The post office address, including the street and number, if any, of the limited liability company's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and one of the following: a member or manager of the limited liability company, a member or manager of a limited liability company that is a member or manager of the limited liability company, an officer or director of a corporation that is a member or manager of the limited liability company, a general partner of a general or limited partnership that is a member or manager of the limited liability company, a trustee of a trust that is a member or manager of the limited liability company, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth; and

3. The post office address, including the street and number, if any, of the principal office of the limited liability company, which may be the same as the registered office, but need not be within the Commonwealth.

B. The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement of a limited liability company.

C. The articles of organization need not set forth any of the powers enumerated in this chapter.

D. If the Commission finds that the articles of organization comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of organization.

1991, c. 168; 1992, c. 574; 1993, c. 113; 1997, c. 190; 2000, c. 162; 2001, cc. 517, 541; 2004, c. 314; 2006, c. 748; 2009, c. 763.

§ 13.1-1011.1. Articles of correction

A. A limited liability company may correct its articles of organization at any time to correct a name or address specified in the articles of organization that was inadvertently or improperly set forth.

B. For a correction to the articles of organization of a limited liability company to be adopted, the correction shall be adopted by a majority vote of the managers, provided that if the limited liability company has been formed without any managers and no managers have been appointed, the correction may be adopted by a majority vote of the members entitled to vote thereon, unless the articles of organization require a greater vote, provided that if the limited liability company has been formed without any managers or members and no members have been admitted, a correction may be adopted by a majority vote of the organizers of the limited liability company.

C. To correct its articles of organization, a limited liability company shall file with the Commission articles of correction setting forth:

1. The name of the limited liability company;

2. The text of each correction;

3. A statement of the nature of the error necessitating each correction; and

4. A statement of the manner in which the correction was adopted.

If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction.

1998, c. 432; 2003, c. 379; 2006, c. 748.

§ 13.1-1012. Name

A. A limited liability company name shall contain the words "limited company" or "limited liability company" or their abbreviations "L.C.," "LC," "L.L.C.," or "LLC."

B. A limited liability company name shall not contain:

1. Any word, abbreviation, or combination of characters that states or implies the limited liability company is a corporation or a limited partnership; or

2. Any word or phrase the use of which is prohibited by law for such company.

C. Except as authorized by subsection D, a limited liability company name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

2. A limited liability company name reserved under § 13.1-1013;

3. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

5. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic limited liability company may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying limited liability company.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a limited liability company name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § 13.1-544.1, subsection A of § 13.1-630, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

1991, c. 168; 1992, c. 574; 1995, c. 168; 2003, cc. 340, 592; 2005, c. 379; 2012, c. 63.

§ 13.1-1013. Reserved name

A. A person may apply to the Commission to reserve the exclusive use of a limited liability company name, including a designated name for a foreign limited liability company. The limited liability company name applied for need not comply with subsection A of § 13.1-1012. If the Commission finds that the limited liability company name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved limited liability company name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved limited liability company name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

1991, c. 168; 2006, c. 505; 2015, c. 444.

§ 13.1-1014. Amendment of articles of organization

A. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles. An amendment to the articles of organization may delete the name and address of the registered agent or registered office, or the address of the principal office, if a statement of change described in § 13.1-1016 or 13.1-1018.1, as the case may be, is on file with the Commission.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;

2. The text of each amendment adopted;

3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

1991, c. 168; 1997, c. 190; 2001, c. 548; 2005, c. 255; 2006, cc. 748, 912; 2008, c. 108; 2013, c. 17.

§ 13.1-1014.1. Restatement of articles of organization

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization, including an amendment to delete the name and address of the registered agent or registered office, or the address of the principal office, if a statement of change described in § 13.1-1016 or 13.1-1018.1, as the case may be, is on file with the Commission.

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, a restatement may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

D. A limited liability company restating its articles of organization shall file with the Commission articles of restatement setting forth:

1. The name of the limited liability company immediately prior to restatement;

2. Whether the restatement contains an amendment to the articles of organization;

3. The text of the restated articles of organization or amended and restated articles of organization;

4. The date of adoption of the articles of restatement; and

5. A statement that the restatement was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the

certificate of restatement is effective, the restated articles of organization or amended and restated articles of organization supersede the original articles of organization and all amendments to the original articles of organization.

F. The Commission may certify restated articles of organization or amended and restated articles of organization as the articles of organization currently in effect.

2005, c. 255; 2006, cc. 748, 912; 2008, c. 108; 2013, c. 17.

Article 3 - REGISTERED OFFICE AND AGENT; PRINCIPAL OFFICE

§ 13.1-1015. Registered office and registered agent

A. Each domestic limited liability company and each foreign limited liability company registered pursuant to Article 10 (§ 13.1-1051 et seq.) of this chapter shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent who shall be either:

a. An individual who is a resident of the Commonwealth and is (i) a member or manager of the limited liability company, (ii) a member or manager of a limited liability company that is a member or manager of the limited liability company, (iii) an officer or director of a corporation that is a member or manager of the limited liability company, (iv) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (v) a trustee of a trust that is a member or manager of the limited liability company, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office;

b. A domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice, or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return; or

c. A Virginia resident who is an officer of the limited liability company, provided that such a registered agent or a natural person designated by the registered agent shall be available during regular business hours at the registered office to accept service of any process, notice, or demand. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return. As used in this subdivision, "officer of the limited liability company" means any employee of the limited liability company, other than a member or manager of the limited liability company, who has been designated by the limited liability company by instrument in writing as a person upon whom any process, notice, or demand may be served.

B. The sole duty of the registered agent is to forward to the limited liability company or foreign limited liability company at its last known address any process, notice, or demand that is served on the registered agent.

1991, c. 168; 1993, c. 113; 1994, c. 348; 1996, c. 265; 2000, cc. 162, 537; 2001, cc. 517, 541; 2004, c. 314; 2005, c. 255; 2016, c. 275.

§ 13.1-1016. Change of registered office or registered agent

A. A limited liability company or a foreign limited liability company registered to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the domestic or foreign limited liability company will be in compliance with the requirements of § 13.1-1015.

B. A statement of change shall forthwith be filed with the Commission by a domestic or foreign limited liability company whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1015.

C. A domestic or foreign limited liability company's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A domestic or foreign limited liability company's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-1015. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the domestic or foreign limited liability company on or before the business day following the day on which the statement is filed.

1991, c. 168; 2003, c. 597; 2009, c. 450; 2010, c. 434.

§ 13.1-1017. Resignation of registered agent

A. The registered agent of a domestic or foreign limited liability company may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the domestic or foreign limited liability company by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1991, c. 168; 2010, c. 434.

§ 13.1-1018. Service on limited liability company

A. A domestic or foreign limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a domestic or foreign limited liability company fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the limited liability company upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited liability company.

1991, c. 168; 2001, cc. 517, 541.

§ 13.1-1018.1. Change of principal office

A. A limited liability company or a foreign limited liability company registered pursuant to Article 10 (§ 13.1-1051 et seq.) may change its principal office upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;

2. The address of its current principal office; and

3. The post office address, including the street and number, if any, of the new principal office.

B. A statement of change shall forthwith be delivered to the Commission for filing by a domestic limited liability company or a foreign limited liability company registered pursuant to Article 10 (§ 13.1-1051 et seq.) whenever the address of its principal office ceases to be the office at which the principal executive offices of the domestic or foreign limited liability company are located.

2009, c. 450; 2016, c. 288.

Article 4 - RELATIONSHIP OF A LIMITED LIABILITY COMPANY AND ITS MEMBERS TO THIRD PERSONS

§ 13.1-1019. Liability to third parties

Except as otherwise provided by this Code or as expressly provided in the articles of organization, no member, manager, organizer or other agent of a limited liability company, regardless of whether the limited liability company has a single member or multiple members, shall have any personal obligation for any liabilities of a limited liability company, whether such liabilities arise in contract, tort or otherwise, solely by reason of being a member, manager, organizer or agent of a limited liability company. For the purposes of this section, a person to whom the rights of a member or manager are delegated as provided in § 13.1-1022 or § 13.1-1024 shall be deemed an agent of a limited liability company.

1991, c. 168; 2004, c. 601; 2006, c. 912; 2015, c. 627.

§ 13.1-1020. Parties to actions

A member of a limited liability company, solely by reason of being a member, is not a proper party to a proceeding by or against a limited liability company, except where (i) the object is to enforce a member's right against or liability to the limited liability company or (ii) as provided in Article 8 (§ 13.1-1042 et seq.) of this chapter.

1991, c. 168; 2007, cc. 233, 639.

§ 13.1-1021. Limited liability company property

Any estate or interest in property may be acquired in the name of the limited liability company, and title to any estate or interest so acquired vests in the limited liability company.

1991, c. 168 .

§ 13.1-1021.1. Agency of members and managers

A. Subject to subsections B and C:

1. Each member is an agent of the limited liability company for the purpose of its business;

2. An act of a member, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and

3. An act of a member which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized by the other members in accordance with § 13.1-1022.

B. Subject to subsection C, in a manager-managed limited liability company:

1. If the articles of organization specify that the limited liability company is to be managed by a manager or managers, a member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member;

2. Each manager is an agent of the limited liability company for the purpose of its business;

3. An act of a manager, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority; and

4. An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the company only if the act was authorized in accordance with § 13.1-1024.

C. Unless the articles of organization limit their authority, any member in a member-managed limited liability company, or any manager in a manager-managed limited liability company, may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property, which instrument shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering the instrument.

1995, c. 168.

Article 5 - RELATIONSHIP OF MEMBERS TO EACH OTHER

§ 13.1-1022. Management of limited liability company

A. Except to the extent that the articles of organization or an operating agreement provides in writing for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

B. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

C. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

D. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company have the power and authority to delegate to one or more other persons the members' rights and powers to manage and control the business and affairs of the

limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such persons may be denominated as officers of the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement.

E. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company may take action permitted or required to be taken by the members without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a member by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

F. The articles of organization or an operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members.

G. The articles of organization, an operating agreement, or a plan of merger may provide that dissenters' rights with respect to a membership interest shall be available for any class or group of members in connection with any amendment of an operating agreement, any merger in which the limited liability company is a party, any conversion of the limited liability company to another business form, any transfer to or domestication in any other jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets.

1991, c. 168; 1992, c. 574; 1995, c. 168; 1998, c. 432; 2002, c. 288; 2004, c. 601; 2005, c. 255.

§ 13.1-1023. Operating agreement

A. Authority.

1. The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of the Commonwealth or the articles of organization. An operating agreement may provide rights to any per-

son, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.

2. If a limited liability company has only one member, an operating agreement shall be deemed to include:

a. Any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.

b. Any agreement, regardless of whether the agreement is in writing, between the member and the limited liability company, that relates to the affairs of the limited liability company and the conduct of its business, provided that the limited liability company has a manager that is a person other than the member.

B. Adoption and amendment.

1. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization or a written operating agreement specifically requires otherwise, an operating agreement need not be in writing.

2. If the articles of organization or an operating agreement does not provide for the manner by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement.

3. If the articles of organization or the operating agreement provide for the manner by which an operating agreement may be amended, including by requiring the approval of a person who is not a party to the operating agreement or requiring the satisfaction of conditions, an operating agreement may be amended only in that manner or as otherwise permitted by law; provided that (i) the approval of any person may be waived by that person and (ii) any conditions may be waived by all persons for whose benefit the conditions were intended.

C. Enforcement of operating agreement.

1. A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

2. As an alternative to injunctive or other equitable relief, when the provisions of § 13.1-1047 are applicable, the court may order dissolution of the limited liability company.

1991, c. 168; 1993, c. 113; 1997, c. 190; 2005, c. 255; 2009, c. 763; 2012, c. 706.

§ 13.1-1023.1. Remedies for breach of operating agreement by member or manager

A. An operating agreement may provide that:

1. A member or manager who fails to perform in accordance with, or to comply with terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

2. At the time or upon the happening of events specified in the operating agreement, a member or manager shall be subject to specified penalties or specified consequences.

The specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in subsection D of § 13.1-1027.

B. In the articles of organization, in writing in an operating agreement or in another writing, a member or manager may consent to or be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the Commonwealth, or the exclusivity of arbitration in a specified jurisdiction of the Commonwealth, and to be served with legal process in a manner prescribed in the articles of organization, an operating agreement, or other writing.

2003, c. 340; 2004, c. 601.

§ 13.1-1024. Management of a limited liability company by a manager or managers

A. The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among one or more managers.

B. Managers need not be residents of this Commonwealth or members of the limited liability company unless the articles of organization or an operating agreement so require. The articles of organization or an operating agreement may prescribe other qualifications for managers.

C. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

D. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the members.

E. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

F. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.

G. Unless otherwise provided in the articles of organization or an operating agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

H. Unless otherwise provided in the articles of organization or an operating agreement, a manager of a limited liability company has the power and authority to delegate to one or more other

persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Such persons may be denominated as officers of the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, such delegation by a manager of a limited liability company shall not cause the manager to cease to be a manager of the limited liability company.

I. Unless otherwise provided in the articles of organization or an operating agreement, the managers of a limited liability company may take any action permitted or required to be taken by the managers without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a manager by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and any such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

J. The articles of organization or an operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers.

1991, c. 168; 1992, c. 574; 1996, c. 265; 1998, c. 432; 2002, c. 288; 2004, c. 601.

§ 13.1-1024.1. General standards of conduct for a manager

A. A manager shall discharge his or its duties as a manager in accordance with the manager's good faith business judgment of the best interests of the limited liability company.

B. Unless a manager has knowledge or information concerning the matter in question that makes reliance unwarranted, a manager is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more managers or employees of the limited liability company whom the manager believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the manager believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the managers of which the manager is not a member if the manager believes, in good faith, that the committee merits confidence.

C. A person alleging a violation of this section has the burden of proving the violation.

D. For the purposes of this section only, the term "manager" shall be deemed to include any member that is participating in the management of the limited liability company.

1992, c. 574 .

§ 13.1-1025. Limitation of liability of members and managers; exception

A. In any proceeding brought by or in the right of a limited liability company or brought by or on behalf of members of the limited liability company, the damages assessed against a manager or member arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in writing in the articles of organization or an operating agreement as a limitation on or elimination of the liability of the manager or member; or

2. The greater of (i) $100,000 or (ii) the amount of cash compensation received by the manager or member from the limited liability company during the twelve months immediately preceding the act or omission for which liability was imposed; however, the cash compensation of a manager or member shall not be deemed to include amounts constituting distributions for the purposes of § 13.1-1035.

B. The liability of a manager or member shall not be limited as provided in this section to the extent otherwise provided in writing in the articles of organization or an operating agreement, or if the manager or member engaged in willful misconduct or a knowing violation of the criminal law.

C. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of organization or operating agreement with respect to any act or omission occurring before such amendment.

1991, c. 168; 1992, c. 574; 2002, c. 288.

§ 13.1-1026. Business transactions of members or managers with the limited liability company

Except as provided in the articles of organization or an operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

1991, c. 168 .

§ 13.1-1027. Contributions

A. The contributions of a member to a limited liability company may be in cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

B. Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records required to be kept by § 13.1-1028, of such contribution that has not been made.

C. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

D. The articles of organization or an operating agreement may provide in writing that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his interest in the limited liability company to that of nondefaulting members, a forced sale of his interest in the limited liability company, forfeiture of his interest in the limited liability company, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his interest in the limited liability company by appraisal or by formula and redemption or sale of his interest in the limited liability company at such value, or other penalty or consequence.

E. No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.

F. The contributions of a corporation to a limited liability company of which such corporation is a member may be in the form of an asset for which an application for a project requiring a certificate has been approved by the Commissioner pursuant to the provisions of Title 32.1. No further approval by such Commissioner shall be required as a condition to the validity of the

member's contribution of such an asset to the limited liability company if (i) both the member and the limited liability company have their principal offices within the same city or county of the Commonwealth, (ii) such contributing member owns at least one-third of the membership interests of the limited liability company, and (iii) the assets contributed by such member to the limited liability company comprise not more than ten percent of such assets of the member.

1991, c. 168; 1995, c. 168; 1999, c. 966.

§ 13.1-1028. Information and records

A. Each limited liability company shall, at its discretion, either (i) keep at its principal office or (ii) provide each member access as an electronic record, as defined in § 13.1-603, on a network or system to the following:

1. A current list of the full name and last known business address of each member, in alphabetical order;

2. A copy of the articles of organization and the certificate of organization, and all articles of amendment and certificates of amendment thereto;

3. Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three most recent years;

4. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years; and

5. Unless contained in a written operating agreement, a writing setting out:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made;

c. Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution; and

d. Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

B. Each member has the right, upon reasonable request, to:

1. Inspect and copy any of the limited liability company records required to be maintained by this section; and

2. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited liability company, (ii) promptly after becoming available, a copy of

the limited liability company's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited liability company, except to the extent the information demanded is unreasonable or otherwise improper under the circumstances.

C. Notwithstanding the provisions of subsections A and B, the rights of a member to obtain information as provided in such subsections may be restricted in writing in an original operating agreement or any subsequent written amendment to an operating agreement approved or adopted by all of the members and in compliance with any applicable requirements of the operating agreement.

1991, c. 168; 1992, c. 574; 2001, c. 548; 2002, c. 288; 2016, c. 287.

Article 6 - FINANCE

§ 13.1-1029. Sharing of profits and losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, on the basis provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § 13.1-1028, of the contributions made by each member to the extent they have been received by the limited liability company.

1991, c. 168; 1995, c. 168; 1997, c. 190.

§ 13.1-1030. Sharing of distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, on the basis provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § 13.1-1028, of the contributions made by each member to the extent they have been received by the limited liability company.

1991, c. 168; 1995, c. 168; 1997, c. 190.

§ 13.1-1031. Interim distributions

Except as provided in this article, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement.

1991, c. 168; 1996, c. 265.

§ 13.1-1032. Resignation of member

A member may resign from a limited liability company only to the extent provided for in writing in the articles of organization or an operating agreement.

1991, c. 168; 1995, c. 168.

§ 13.1-1033. Repealed

Repealed by Acts 1995, c. 168.

§ 13.1-1034. Distribution in kind

Except as provided in writing in the articles of organization or an operating agreement, a member, regardless of the nature of his or its contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in writing in the articles of organization or an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him or it exceeds a percentage of that asset which his or its membership interest constitutes of all membership interests in the limited liability company.

1991, c. 168 .

§ 13.1-1035. Restrictions on making distribution

A. No distribution may be made by a limited liability company if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they became due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section either on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. The effect of a distribution under subsection A of this section is measured as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

D. [Repealed.]

E. For the purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

F. This section shall not apply to distributions in liquidation under Article 9 (§ 13.1-1046 et seq.) of this chapter.

1991, c. 168; 1992, c. 574; 2001, c. 548; 2009, c. 763.

§ 13.1-1036. Liability upon wrongful distribution

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of § 13.1-1035 of this chapter, then the member is liable to the limited liability company for a period of two years thereafter for the amount of the distribution wrongfully made.

1991, c. 168; 2009, c. 763.

§ 13.1-1037. Right to distribution

At the time a member becomes entitled to receive a distribution, he or it has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

1991, c. 168 .

Article 7 - RIGHTS OF AND ASSIGNMENT BY MEMBERS

§ 13.1-1038. Nature of interest in limited liability company

A membership interest in a limited liability company is personal property. The only transferable interest of a member in the limited liability company is the member's share of the profits and losses of the limited liability company and the member's right to receive distributions.

1991, c. 168; 2006, c. 912.

§ 13.1-1038.1. Admission of members

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company;

2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040;

3. In the case of a limited liability company that has no members as of the commencement of its existence under § 13.1-1004, as provided in any writing signed by both the initial member or members and the managers, if any are designated in the articles of organization, or, if no managers are so designated, the organizers;

4. In the case of a limited liability company the last remaining member of which has dissociated, (i) as provided in a writing executed by the successor in interest of that member, who may provide for the admission of the successor in interest or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, provided that the articles of organization or an operating agreement may provide that the successor in interest of the last remaining member shall be obligated to

agree in writing to the admission of the successor in interest of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, or (ii) in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of organization or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;

5. In the case of a person being admitted as a member of a limited liability company pursuant to a merger approved in accordance with § 13.1-1071, as provided in the articles of merger or an operating agreement of the surviving limited liability company; and

6. In the case of a person being admitted as a member of a limited liability company pursuant to a conversion or domestication of a partnership, non-United States entity, foreign limited liability company, or corporation into a domestic limited liability company in accordance with Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of this title, or, effective on and after November 1, 2006, Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title, as provided in the articles of organization or an operating agreement of the converted or domesticated limited liability company at the time of conversion or domestication.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in an operating agreement, articles of merger or articles of organization, as applicable, or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:

1. A person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company; and

2. A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

1993, c. 113; 1997, c. 190; 2000, c. 581; 2001, c. 548; 2005, c. 255; 2006, cc. 748, 912; 2016, c. 288.

§ 13.1-1039. Assignment of interest

A. Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. Except as provided in subsection A of § 13.1-1040, an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Unless otherwise provided in the articles of organization or an operating agreement, such an assignment entitles the assignee to receive, to the extent assigned, only any share of profits and losses and distributions to which the assignor would be entitled.

B. Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company may be evidenced by a certificate of interest issued by the limited liability company. The articles of organization or an operating agreement may provide for the assignment or transfer of any interest represented by such a certificate and make other provisions with respect to such certificates.

1991, c. 168; 1992, c. 574; 1998, c. 432; 2006, c. 912; 2013, c. 772.

§ 13.1-1040. Right of assignee to become member

A. Except as otherwise provided in writing in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only by the consent of a majority of the member-managers (other than the assignor member) of a manager-managed limited liability company of which one or more members is a manager, or by a majority vote of the members (other than the assignor member) of any other limited liability company.

B. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and this chapter. An assignee who becomes a member also is liable for any obligations of his assignor to make contributions and return distributions as provided in Articles 5 (§ 13.1-1022 et seq.) and 6 (§ 13.1-1029 et seq.) of this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to him at the time he or it became a member.

C. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from his liability under §§ 13.1-1027 and 13.1-1036 to the limited liability company.

1991, c. 168; 1994, c. 348; 1995, c. 168; 1997, c. 190.

§ 13.1-1040.1. Events causing member's dissociation

Except as otherwise provided in the articles of organization or an operating agreement, a member is dissociated from a limited liability company upon the occurrence of any of the following events:

1. To the extent resignation of a member is provided for in writing in the articles of organization or an operating agreement, the limited liability company's having notice of the member's express will to resign as a member on a later date specified by the member in the notice or, if no later date is specified, the date of notice;

2. An event agreed to in the articles of organization or an operating agreement as causing the member's dissociation;

3. The member's expulsion pursuant to the articles of organization or an operating agreement;

4. The member's expulsion by the unanimous vote of the other members if:

a. It is unlawful to carry on the business of the limited liability company with that member; or

b. There has been an assignment or transfer of all or substantially all of that member's membership interest, other than a transfer for security purposes or a court order charging the member's interest;

5. On application by the limited liability company or another member, the member's expulsion by judicial determination because:

a. The member engaged in wrongful conduct that adversely and materially affected the business of the limited liability company;

b. The member willfully or persistently committed a material breach of the articles of organization or an operating agreement; or

c. The member engaged in conduct relating to the business of the limited liability company which makes it not reasonably practicable to carry on the business with the member;

6. The member's:

a. Becoming a debtor in bankruptcy;

b. Executing an assignment for the benefit of creditors;

c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that member or of all or substantially all of that member's property; or

d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

7. In the case of a member who is an individual:

a. The member's death;

b. The appointment of a guardian, committee or conservator for the member; or

c. A judicial determination that the member has otherwise become incapable of performing the member's duties under the articles of organization or an operating agreement;

8. In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor trustee;

9. In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor personal representative;

10. Termination of a member who is not an individual, partnership, corporation, limited liability company, trust, or estate;

11. The expiration of ninety days after the limited liability company notifies a corporate member that it will be expelled because it has filed articles of dissolution or the equivalent, its existence has been terminated or its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its charter or its right to conduct business; or

12. A partnership or limited liability company that is a member has been dissolved and its business is being wound up.

1998, c. 432; 2002, c. 288; 2009, c. 763.

§ 13.1-1040.2. Effect of a member's dissociation

A. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not affect the membership interest held by the dissociated member or the former member's successor in interest. The former member or successor in interest shall continue to hold a membership interest and shall have the same rights that an assignee of the membership interest would have under subsection A of § 13.1-1039.

B. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and, upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

2000, c. 581; 2006, c. 912.

§ 13.1-1041. Repealed

Repealed by Acts 2004, c. 601.

§ 13.1-1041.1. Member's transferable interest subject to charging order

A. On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of the interest.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

C. This chapter does not deprive a member or a member's assignee of a right under exemption laws with respect to the judgment debtor's interest in the limited liability company.

D. The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of a member's assignee may satisfy a judgment out of the judgment debtor's transferable interest in the limited liability company.

E. No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

2004, c. 601; 2006, c. 912.

Article 8 - DERIVATIVE ACTIONS

§ 13.1-1042. Right of action; standing; condition precedent; stay of proceeding

A. A member shall not commence or maintain a derivative proceeding unless the member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company and is a proper plaintiff pursuant to § 13.1-1043.

B. No member may commence a derivative proceeding until:

1. A written demand has been made on the limited liability company to take suitable action; and

2. Ninety days have expired from the date delivery of the demand was made unless (i) the member has been notified before the expiration of 90 days that the demand has been rejected by the limited liability company or (ii) irreparable injury to the limited liability company would result by waiting until the end of the 90-day period.

C. If the limited liability company commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

1991, c. 168; 2011, c. 379.

§ 13.1-1043. Proper plaintiff

In a derivative action, the plaintiff shall be a member at the time of bringing the action and (i) shall have been a member at the time of the transaction of which he or it complains or (ii) his or its status as a member shall have devolved upon him or it by operation of law or pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at the time of the transaction.

1991, c. 168 .

§ 13.1-1044. Pleading

In derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure commencement of the action by a member or manager with the authority to do so or the reasons for not making the effort.

1991, c. 168 .

§ 13.1-1045. Expenses

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, except as hereinafter provided, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by him or it. On termination of the derivative action, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the action if it finds that the action was commenced without reasonable cause or the plaintiff did not fairly and adequately represent the interests of the members and the limited liability company in enforcing the right of the limited liability company.

1991, c. 168 .

Article 9 - DISSOLUTION

§ 13.1-1046. Dissolution; generally

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of organization or an operating agreement;

2. Upon the unanimous written consent of the members;

3. The entry of a decree of judicial dissolution under § 13.1-1047;

4. Automatic cancellation of its existence pursuant to § 13.1-1050.2; or

5. Involuntary cancellation of its existence pursuant to § 13.1-1050.3.

1991, c. 168; 1994, c. 348; 1995, c. 168; 1996, c. 265; 1997, c. 190; 1998, c. 432; 2000, c. 581; 2001, c. 548; 2008, cc. 108, 588, 770; 2009, c. 167.

§ 13.1-1047. Judicial dissolution

A. On application by or for a member, the circuit court of the locality in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

B. When the winding up of the affairs of the limited liability company has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the limited liability company's existence.

1991, c. 168; 2008, c. 108.

§ 13.1-1047.1. Waiver of cancellation

Except in the case of an event of dissolution described in subdivision 4 or 5 of § 13.1-1046, at any time after the dissolution of a limited liability company and before the winding up of its business is completed, all of the members may waive the right to have the limited liability company's business wound up and its existence canceled. In that event:

1. The limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the limited liability company or a member after the dissolution and before the waiver is determined as if dissolution had never occurred; and

2. The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

2012, c. 706.

§ 13.1-1048. Winding up

A. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members.

B. Unless otherwise provided in the articles of organization or an operating agreement, upon the dissolution of a limited liability company, the members may wind up the limited liability company's affairs; however, the circuit court of the locality in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative, or assignee, and in connection therewith, may appoint one or more liquidating trustees.

C. Upon dissolution of a limited liability company and until the effective date of a certificate of cancellation issued pursuant to § 13.1-1050, the liquidating trustees, in the name and on behalf of the limited liability company, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited liability company's business, (iii) dispose of and convey the limited liability company's property, (iv) discharge or make reasonable provision for the limited liability company's liabilities, and (v) distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and without imposing the liability of a general partner on a liquidating trustee.

1991, c. 168; 1995, c. 168; 2002, c. 288; 2004, c. 601; 2006, c. 748; 2008, c. 108.

§ 13.1-1049. Distribution of assets upon dissolution

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than for distributions to members under § 13.1-1031;

2. Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under § 13.1-1031; and

3. Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

1991, c. 168; 1996, c. 265.

§ 13.1-1049.1. Known claims against dissolved limited liability company

A. A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved limited liability company shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State a deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved limited liability company; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved limited liability company is barred to the extent that it is not admitted:

1. If the dissolved limited liability company delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved limited liability company by the deadline; or

2. If the dissolved limited liability company delivered written notice to the claimant that its claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the effective date of such notice.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or still may be occurring.

2004, c. 601; 2009, c. 763.

§ 13.1-1049.2. Other claims against dissolved limited liability company

A. A dissolved limited liability company may also publish notice of its dissolution and request that persons with claims against the dissolved limited liability company present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the city or county where the dissolved limited liability company's principal office, or, if none in the Commonwealth, its registered office, is or was last located;

2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

3. State that a claim against the dissolved limited liability company will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of publication of the notice.

C. If the dissolved limited liability company publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § 13.1-1049.1;

2. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; and

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 13.1-1049.1.

D. A claim that is not barred by subsection C of § 13.1-1049.1 or subsection C of § 13.1-1049.2 may be enforced:

1. Against the dissolved limited liability company, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-1049.3, if the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member

in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

2006, c. 912.

§ 13.1-1049.3. Court proceedings

A. A dissolved limited liability company that has complied with the notice requirements of § 13.1-1049.2 may file an application with the circuit court of the city or county where the dissolved limited liability company's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that (i) are contingent or have not been made known to the dissolved limited liability company or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited liability company, are reasonably estimated to arise after the effective date of dissolution or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § 13.1-1049.1. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-1049.2.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved limited liability company to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited liability company.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

D. Provision by the dissolved limited liability company for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved limited liability company's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 13.1-1049.1, and such claims may not be enforced against a member who received assets in liquidation.

2006, c. 912; 2009, c. 763.

§ 13.1-1050. Articles of cancellation

A. When the affairs of a limited liability company have been wound up pursuant to § 13.1-1048, it shall file articles of cancellation with the Commission. The articles shall set forth:

1. The name of the limited liability company;

2. The identification number issued by the Commission to the limited liability company;

3. The effective date of its certificate of organization;

4. A statement that the limited liability company has completed the winding up of its affairs; and

5. Any other information the members determine to include therein, including the reason for filing the articles of cancellation.

B. If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the limited liability company's existence. Upon the effective date of such certificate, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate actions by members as provided in this chapter.

1991, c. 168; 2006, c. 748; 2008, c. 108; 2013, c. 17.

§ 13.1-1050.1. Repealed

Repealed by Acts 2008, c. 108, cl. 2, effective April 1, 2009.

§ 13.1-1050.2. Automatic cancellation of limited liability company existence

A. Whether or not the notice described in subsection B of § 13.1-1064 is mailed, if any limited liability company fails to pay its annual registration fee on or before the last day of the third month immediately following its annual registration fee due date each year, the existence of the limited liability company shall be automatically canceled as of that day.

B. If any limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of the impending cancellation of its existence. If the limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the limited liability company shall be automatically canceled as of that day.

C. The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its members or interest holders according to their respective rights and interests.

D. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited liability company's existence pursuant to this section.

2008, c. 108; 2010, c. 703; 2013, c. 17.

§ 13.1-1050.3. Involuntary cancellation of limited liability company existence

A. The existence of a limited liability company may be canceled involuntarily by order of the Commission when it finds that the limited liability company has:

1. Continued to exceed or abuse the authority conferred upon it by law;

2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Failed to file any document required by this chapter to be filed with the Commission; or

4. Been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its members or managers constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the limited liability company giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its members or interest holders according to their respective rights and interests.

D. Any limited liability company convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited liability company whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. 108; 2009, c. 167.

§ 13.1-1050.4. Reinstatement of a limited liability company that has ceased to exist

A. A limited liability company that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § 13.1-1050.3 or (ii) entered pursuant to § 13.1-1047 and

the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited liability company.

B. To have its existence reinstated, a limited liability company shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the limited liability company;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the limited liability company ceased to exist and that would have been assessed or imposed to the date of reinstatement if the limited liability company's existence had not been canceled;

4. If the name of the limited liability company does not comply with the provisions of § 13.1-1012 at the time of reinstatement, articles of amendment to the articles of organization to change the limited liability company's name to a name that satisfies the provisions of § 13.1-1012, with the fee required by this chapter for the filing of articles of amendment; and

5. If the limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

C. If the limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited liability company shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited liability company or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited liability company's existence had never occurred.

2008, c. 108; 2013, c. 17.

§ 13.1-1050.5. Survival of remedy after cancellation of existence

The cancellation of existence of a limited liability company shall not take away or impair any remedy available to or against the limited liability company or its members or managers for any right or claim existing, or any liability incurred, before the cancellation. Any action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members or managers shall have power to take limited liability company action or other action as shall be appropriate to protect any remedy, right, or claim.

2016, c. 288.

Article 10 - FOREIGN LIMITED LIABILITY COMPANIES

§ 13.1-1051. Authority to transact business required; governing law

A. A foreign limited liability company may not transact business in the Commonwealth until it obtains a certificate of registration from the Commission.

B. Subject to the Constitution of the Commonwealth:

1. The laws of the state or other jurisdiction under which a foreign limited liability company is formed govern its formation and internal affairs and the liability of its members and managers; and

2. A foreign limited liability company may not be denied a certificate of registration by reason of any difference between those laws and the laws of the Commonwealth.

However, a foreign limited liability company holding a valid certificate of registration to transact business in the Commonwealth shall have no greater rights and privileges than a domestic limited liability company. The certificate of registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in the Commonwealth.

1991, c. 168; 2008, c. 108.

§ 13.1-1052. Application for certificate of registration

A. A foreign limited liability company may apply to the Commission for a certificate of registration to transact business in the Commonwealth. The application shall be made on a form prescribed and furnished by the Commission. The application shall set forth:

1. The name of the foreign limited liability company and, if the limited liability company is prevented by § 13.1-1054 from using its own name in the Commonwealth, a designated name that satisfies the requirements of § 13.1-1054;

2. The name of the state or other jurisdiction under whose law it is formed, its date of formation and period of duration, and if the limited liability company was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission;

3. The address of the proposed registered office of the foreign limited liability company in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at that address and a statement that the registered agent is either (a) an individual who is a resident of the Commonwealth and is either (1) a member or manager of the limited liability company, (2) a member or manager of a limited liability company that is a member or manager of the limited liability company, (3) an officer or director of a corporation that is a member or manager of the limited liability company, (4) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (5) a trustee of a trust that is a member or manager of the limited liability company, or (6) a member of the Virginia

State Bar, or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to maintain a registered agent in the Commonwealth as required by § 13.1-1015, the registered agent's authority has been revoked, the registered agent has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The post office address, including the street and number, if any, of the foreign limited liability company's principal office; and

6. A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § 13.1-1002.

B. The foreign limited liability company shall deliver with the completed application a copy of its articles of organization or other constituent documents and all amendments and corrections thereto filed in the foreign limited liability company's state or other jurisdiction of organization, duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth.

1991, c. 168; 1992, c. 574; 1996, c. 265; 2002, c. 608; 2004, c. 274; 2008, c. 108; 2016, c. 288.

§ 13.1-1053. Repealed

Repealed by Acts 2008, c. 108, cl. 2, effective April 1, 2009.

§ 13.1-1054. Name of foreign limited liability company

A. No certificate of registration shall be issued to a foreign limited liability company unless the name of the foreign limited liability company satisfies the requirements of § 13.1-1012.

B. If the name of a foreign limited liability company does not satisfy the requirements of § 13.1-1012, to obtain or maintain a certificate of registration to transact business in the Commonwealth:

1. The foreign limited liability company may adopt a designated name for use in the Commonwealth that adds the words "limited company" or "limited liability company" or the abbreviation "L.C., " "LC, " "L.L.C." or "LLC" to its name or, if it is a professional limited liability company, the words "professional company" or "professional limited liability company" or the initials "P.L.C., " "PLC, " "P.L.L.C., " or "PLLC" at the end of its name, if it informs the Commission of its designated name; or

2. If its real name is unavailable, the foreign limited liability company may adopt a designated name that is available, and which satisfies the requirements of § 13.1-1012, if it informs the Commission of the designated name.

1991, c. 168; 1992, c. 574; 1996, c. 265; 2012, c. 63; 2016, c. 288.

§ 13.1-1055. Amendments; amended applications for registration

A. A foreign limited liability company that is registered to transact business in the Commonwealth shall promptly file with the Commission an amended application for registration on a form prescribed and furnished by the Commission:

1. If any statement in the application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect; or

2. To abandon or change the designated name adopted by the limited liability company for use in the Commonwealth pursuant to subsection B of § 13.1-1054.

B. Notwithstanding the provisions of subsection A, the manner by which a foreign limited liability company shall change its registered office or principal office is by filing a statement of change pursuant to § 13.1-1016 or 13.1-1018.1, as the case may be.

C. Whenever the articles of organization or other constituent document of a foreign limited liability company that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited liability company shall promptly deliver to the Commission for filing a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction of its organization.

1991, c. 168; 1992, c. 574; 2003, c. 370; 2008, c. 108; 2009, c. 450; 2016, c. 288.

§ 13.1-1056. Voluntary cancellation of certificate of registration

A. A foreign limited liability company registered to transact business in the Commonwealth may apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited liability company, the name of the state or other jurisdiction under whose law it is or was formed, and the identification number issued by the Commission to the foreign limited liability company;

2. If applicable, a statement that the foreign limited liability company was a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it was organized and that it was not the surviving entity of the merger, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was formed;

3. That the foreign limited liability company is not transacting business in the Commonwealth and that it surrenders its registration to transact business in the Commonwealth;

4. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the foreign limited liability company.

B. The Commission shall not issue a certificate of cancellation to any foreign limited liability company unless the foreign limited liability company files with the Commission a statement certifying that the foreign limited liability company has filed returns and has paid all state taxes to the time of the certificate, or a statement that no returns are required to be filed or taxes are required to be paid. In that case the foreign limited liability company may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and all required fees have been paid, it shall issue a certificate of cancellation canceling the certificate of registration.

C. Before any foreign limited liability company registered to transact business in the Commonwealth cancels its existence, it shall deliver to the Commission for filing an application for a certificate of cancellation. Whether or not an application is filed, the cancellation of the existence of a foreign limited liability company shall not take away or impair any remedy available against the foreign limited liability company for any right or claim existing or any liability incurred before the cancellation. Any action or proceeding against a foreign limited liability company whose existence has been canceled may be defended by the foreign limited liability company in its name. The members, managers, and officers shall have power to take any action as shall be appropriate to protect any remedy, right, or claim. The right of a foreign limited liability company whose existence has been canceled to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state or other jurisdiction of its organization.

D. Service of process on the clerk of the Commission is service of process on a foreign limited liability company whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign limited liability company may be made in any other manner permitted by law.

1991, c. 168; 2008, cc. 588, 770; 2009, c. 167; 2012, c. 130; 2013, c. 17; 2016, c. 288.

§ 13.1-1056.1. Automatic cancellation of certificate of registration

A. Whether or not the notice described in subsection B of § 13.1-1064 is mailed, if any foreign limited liability company fails to pay its annual registration fee on or before the last day of the third month immediately following its annual registration fee due date each year, such foreign limited

liability company shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

B. If any foreign limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign limited liability company of the impending cancellation of its certificate of registration. If the foreign limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the foreign limited liability company shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

C. The automatic cancellation of a foreign limited liability company's certificate of registration constitutes the appointment of the clerk of the Commission as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited liability company was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited liability company and shall be made on the clerk in accordance with § 12.1-19.1.

D. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

2008, c. 108; 2010, c. 703; 2013, c. 17.

§ 13.1-1056.2. Involuntary cancellation of certificate of registration

A. The certificate of registration to transact business in the Commonwealth of any foreign limited liability company may be canceled involuntarily by order of the Commission when it finds that the foreign limited liability company:

1. Has continued to exceed or abuse the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or other jurisdiction of its organization; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its members or managers constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order the Commission shall issue a rule against the foreign limited liability company giving it an opportunity to be heard and show cause why such an order should

not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited liability company to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited liability company's certificate of registration appoints the clerk of the Commission the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited liability company was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited liability company and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

F. Any foreign limited liability company convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. 108; 2009, c. 167.

§ 13.1-1056.3. Reinstatement of a certificate of registration that has been canceled

A. A foreign limited liability company whose certificate of registration to transact business in the Commonwealth has been canceled may be relieved of the cancellation and have its certificate of registration reinstated by the Commission within five years of the date of cancellation unless the certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1 of § 13.1-1056.2.

B. To have its certificate of registration reinstated, a foreign limited liability company shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the limited liability company;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the limited liability company had not had its certificate of registration canceled;

4. A duly authenticated copy of any amendments or corrections made to the articles of organization or other constituent documents of the foreign limited liability company and any mergers entered into by the foreign limited liability company from the date of cancellation of its certificate of registration to the date of its application for reinstatement, along with an amended application

for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign limited liability company does not comply with the provisions of § 13.1-1054 at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-1054, with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

C. If the foreign limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign limited liability company's certificate of registration to transact business in the Commonwealth.

2008, c. 108; 2013, c. 17.

§ 13.1-1057. Transaction of business without registration

A. A foreign limited liability company transacting business in the Commonwealth may not maintain any action, suit, or proceeding in any court of the Commonwealth until it has registered in the Commonwealth.

B. The successor to a foreign limited liability company that transacted business in the Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign limited liability company or its successor has registered in the Commonwealth.

C. The failure of a foreign limited liability company to register in the Commonwealth does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of the Commonwealth.

D. If a foreign limited liability company transacts business in the Commonwealth without a certificate of registration, each member, manager or employee of the limited liability company who does any of such business in the Commonwealth knowing that a certificate of registration is required and has not been obtained shall be liable for a penalty of not less than $500 and not more than $5,000 to be imposed by the Commission, after the limited liability company and the individual have been given notice and an opportunity to be heard.

E. Suits, actions, and proceedings may be initiated against a foreign limited liability company that transacts business in the Commonwealth without a certificate of registration by serving process on any manager, managing member, or agent of the limited liability company doing such business or, if none can be found, on the clerk of the Commission or on the limited liability company in any

other manner permitted by law. If any foreign limited liability company transacts business in the Commonwealth without a certificate of registration, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its agent for service of process. Service upon the clerk shall be made in accordance with § 12.1-19.1.

1991, c. 168; 2006, c. 912; 2008, c. 523; 2013, c. 17.

§ 13.1-1058. Actions by Attorney General

The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this Commonwealth in violation of this article.

1991, c. 168 .

§ 13.1-1059. Transactions not constituting doing business

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films that are sent outside of the Commonwealth for processing, editing, marketing and distribution; or

12. Serving, without more, as a general partner of, or as a partner in a partnership that is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

C. The list of activities in subsection A of this section is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

1991, c. 168; 1996, c. 265; 2004, c. 601.

§ 13.1-1060. Merger of foreign limited liability company registered to transact business in Commonwealth

A. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is organized, and that limited liability company is the surviving entity of the merger, it shall, within 30 days after the merger becomes effective, deliver to the Commission for filing a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it is organized. However, the filing shall not be required when a foreign limited liability company merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign limited liability company's articles of organization or other constituent documents are not amended by the merger; and the articles or statement of merger filed on behalf of the domestic corporation, limited liability company, limited partnership, business trust, or partnership pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign limited liability company is organized and that the foreign limited liability company has complied with that law in effecting the merger.

B. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is organized, and that limited liability company is not the surviving entity of the merger, the surviving partnership, limited liability company, business trust, limited partnership, or corporation shall, if not continuing to transact business in the Commonwealth, within 30 days after the merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it was organized, and comply in behalf of the predecessor limited liability company with § 13.1-1056. If a surviving business trust, registered limited liability partnership, limited liability company, limited partnership, or

corporation is to continue to transact business in the Commonwealth and has not registered as a foreign registered limited liability partnership, limited liability company, business trust, or limited partnership or received a certificate of authority to transact business in the Commonwealth as a foreign corporation, as the case may be, it shall, within 30 days after the merger becomes effective, deliver to the Commission an application, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign limited partnership, for registration as a foreign limited partnership, or, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its partnership certificate, statement of registered limited liability partnership, articles of organization, articles of trust, certificate of limited partnership, or articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of registered limited liability partnership, limited liability company, business trust, limited partnership, or corporate records in the state or other jurisdiction under whose laws it is organized, formed, or incorporated.

C. Upon the merger of a foreign limited liability company with one or more foreign partnerships, limited liability companies, business trusts, limited partnerships, or corporations, all property in the Commonwealth owned by any of the partnerships, limited liability companies, business trusts, limited partnerships, or corporations shall pass to the surviving partnership, limited liability company, business trust, limited partnership, or corporation except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Commission.

1991, c. 168; 1992, c. 575; 1997, c. 190; 2004, c. 274; 2008, c. 108; 2016, c. 288.

§ 13.1-1060.1. Entity conversion of foreign limited liability company registered to transact business in Commonwealth

A. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign corporation, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor limited liability company with the provisions of § 13.1-1056; or

2. If the surviving or resulting entity is a foreign corporation, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of authority or registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign limited liability company that is registered to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign limited liability company shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. 274.

Article 11 - ANNUAL REGISTRATION FEES

§ 13.1-1061. Annual registration fees to be assessed and collected by Commission; application of payment

The Commission shall assess and collect the annual registration fees imposed by this chapter. When the Commission receives payment of a registration fee assessed against a domestic or foreign limited liability company, such payment shall be applied against any unpaid registration fees previously assessed against such limited liability company, including any penalties incurred thereon, beginning with the assessment that has remained unpaid for the longest period of time.

1991, c. 168 .

§ 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic and foreign limited liability companies

A. Each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was organized or registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of $50, provided that the initial annual registration fee to be paid by a domestic limited liability company created by entity conversion shall be due in the year after the calendar year in which it converted.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the limited liability company for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth as of the first day of the second month next preceding the month in which it was

organized or registered to transact business in the Commonwealth, and, except as provided in subsection A, shall assess against each such limited liability company the annual registration fee herein imposed.

C. At the discretion of the Commission, the annual registration fee due date for a limited liability company may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of limited liability companies as equally as practicable throughout the year on a monthly basis.

D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign limited liability company.

E. Any domestic limited liability company that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of organization surrender, or certificate of entity conversion, or any foreign limited liability company that has obtained a certificate of cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign limited liability company that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date, shall not be required to pay the annual registration fee for that year. Any foreign limited liability company that has converted, effective on or before its annual registration fee due date pursuant to subsection A in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the annual registration fee for that year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

F. Registration fee assessments that have been paid shall not be refunded.

G. The fees paid into the state treasury under this section and the fees collected under § 13.1-1005 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

1991, c. 168; 1995, c. 621; 2001, c. 545; 2002, c. 1; 2006, c. 748; 2010, c. 703; 2013, c. 17.

§ 13.1-1063. Repealed

Repealed by Acts 2010, c. 703, cl. 3.

§ 13.1-1064. Penalty for failure to timely pay annual registration fees

A. Any domestic or foreign limited liability company that fails to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 shall incur a penalty of $25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalty or liability imposed by law.

B. The Commission shall mail to each domestic and foreign limited liability company that fails to pay the annual registration fee within the time prescribed in § 13.1-1062 a notice of assessment of the penalty imposed herein and of the impending cancellation of its existence or certificate of registration, as the case may be.

1991, c. 168; 1997, c. 190; 2000, c. 52; 2004, cc. 274, 601; 2005, c. 255; 2008, c. 108.

§ 13.1-1065. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds

A. The Commission shall not file or issue with respect to any domestic or foreign limited liability company any document or certificate specified in this chapter, except a statement of change pursuant to § 13.1-1016, a statement of resignation pursuant to § 13.1-1017, and a statement of change pursuant to § 13.1-1018.1, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such limited liability company. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign limited liability company that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the limited liability company's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign limited liability company until the annual registration fee has been paid by or on behalf of that limited liability company.

B. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

1991, c. 168; 2002, c. 608; 2004, c. 316; 2006, c. 659; 2007, c. 810; 2009, c. 450.

§ 13.1-1066. Collection of unpaid bills for annual registration fees

The annual registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies, and fees, by action in the name of the Commonwealth in the appropriate circuit court. Venue shall be in accordance with § 8.01-261.

1991, c. 168; 2016, c. 288.

Article 12 - MISCELLANEOUS

§ 13.1-1067. Property title records

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign limited liability company has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted into a domestic or foreign corporation, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign limited liability company has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign limited liability company's jurisdiction of organization may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1996, c. 282; 1997, c. 190; 2001, c. 548; 2003, c. 340; 2006, c. 912; 2007, c. 771.

§ 13.1-1067.1. Repealed
Repealed by Acts 1993, c. 113 .

§ 13.1-1068. Repealed
Repealed by Acts 2015, c. 709, cl. 2.

§ 13.1-1069. Repealed
Repealed by Acts 2005, c. 839, effective October 1, 2005.

Article 13 - MERGER

§ 13.1-1069.1. Definitions
As used in this article:

"Merger" means a business combination pursuant to § 13.1-1070.

"Party to a merger" means any domestic or foreign limited liability company or other business entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign limited liability company or other business entity into which one or more other domestic or foreign limited liability companies or other business entities are merged.

2016, c. 288.

§ 13.1-1070. Merger

A. One or more domestic limited liability companies may merge with one or more domestic or foreign limited liability companies or other business entities pursuant to a plan of merger.

B. A foreign limited liability company or other business entity may be a party to a merger with a domestic limited liability company only if the merger is permitted by the laws under which the foreign limited liability company or other business entity is organized, formed, or incorporated.

C. The plan of merger shall include:

1. The name and entity type of each domestic or foreign limited liability company or other business entity that will merge and the name of the domestic or foreign limited liability company or other business entity that will be the survivor of the merger;

2. The name of the state or other jurisdiction under whose law each party to the merger is organized, formed, or incorporated;

3. The terms and conditions of the merger;

4. The manner and basis of converting the membership interests of each merging domestic or foreign limited liability company and eligible interests of each merging domestic or foreign other business entity into membership interests, eligible interests, or other securities, obligations, rights to acquire membership interests, eligible interests, or other securities, cash, or other property, or any combination of the foregoing;

5. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign limited liability company and eligible interests of each merging domestic or foreign other business entity into membership interests, eligible interests, or other securities, obligations, rights to acquire membership interests, eligible interests, or other securities, cash, or other property, or any combination of the foregoing;

6. When the survivor is a domestic limited liability company, any amendments to its articles of organization, which may be in the form of amended and restated articles of organization; and

7. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of organization or other organizational document of any party.

D. The plan of merger may also include a provision that the plan may be amended before the effective time and date of the certificate of merger, but if the members of a domestic limited liability company that is a party to the merger are required by any provision of this chapter to approve

the plan, the plan may not be amended after approval of the plan by the members to change any of the following, unless the amendment is approved by the members:

1. The amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests, or other securities, cash, or other property to be received by the members, shareholders, or holders of eligible interests in any party to the merger;

2. The articles of organization of any domestic or foreign limited liability company, the articles of incorporation of any domestic or foreign stock or nonstock corporation, the articles of trust or governing instrument of any domestic or foreign business trust, the certificate of limited partnership of any domestic or foreign limited partnership, or the partnership agreement of any domestic or foreign partnership that will survive the merger; or

3. Any of the other terms or conditions of the plan if the change would adversely affect the members in any material respect.

1992, c. 575; 1997, c. 190; 2003, c. 340; 2004, c. 601; 2005, c. 765; 2008, c. 108; 2016, c. 288.

§ 13.1-1071. Action on a plan of merger

Each domestic limited liability company that is a party to a merger shall approve the plan of merger, unless the articles of organization or a written operating agreement of the limited liability company provides otherwise, by the unanimous vote of the members of the limited liability company. However, a provision of a limited liability company's articles of organization or operating agreement purporting to authorize the limited liability company to approve a merger by a less than unanimous vote of the members shall be effective to permit approval of a merger by a less than unanimous vote only if either (i) the articles of organization or operating agreement included that provision at the time each member who does not vote in favor of the merger became bound by the articles of organization or operating agreement or (ii) the provision was added to the articles of organization or operating agreement through an amendment to which each member who does not vote in favor of the merger specifically consented.

1992, c. 575; 1993, c. 113; 2016, c. 288.

§ 13.1-1072. Articles of merger

A. After a plan of merger has been adopted and approved as required by this chapter, articles of merger shall be signed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger;

2. If the articles of organization of a domestic limited liability company that is the survivor of a merger are amended, as an attachment to the articles of merger, the amendments to the survivor's articles of organization;

3. The date the plan of merger was approved by each domestic limited liability company that is a party to the merger;

4. A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the provisions of § 13.1-1071; and

5. As to each foreign limited liability company or other business entity that is a party to the merger, a statement that the merger is permitted by the state or other jurisdiction under whose law the foreign limited liability company or other business entity is organized, formed, or incorporated and that the foreign limited liability company or other business entity has complied with that law in effecting the merger.

B. Articles of merger shall be delivered to the Commission for filing by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the provisions of this title and Title 50 regarding any domestic other business entity that is a party to the merger if the combined filing satisfies the requirements of this section and the requirements for the filing of articles of merger or a statement of merger on behalf of the domestic other business entity.

1992, c. 575; 1993, c. 113; 1997, c. 190; 2003, cc. 340, 597; 2004, c. 274; 2008, c. 108; 2016, c. 288.

§ 13.1-1073. Effect of merger

When a merger takes effect:

1. The separate existence of every domestic limited liability company that is a party to the merger except the surviving domestic limited liability company, if any, ceases;

2. The title to all real estate and other property owned by each domestic limited liability company party to the merger is vested in the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation without reversion or impairment;

3. The surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation has all liabilities of each domestic limited liability company party to the merger;

4. A proceeding pending by or against any domestic limited liability company party to the merger may be continued as if the merger had not occurred, or the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation may be substituted in the proceeding for the domestic limited liability company whose existence ceased;

5. If a domestic limited liability company is the surviving entity of the merger, the articles of organization and operating agreement of that limited liability company are amended to the extent provided in the plan of merger; and

6. The former holders of membership interests of every domestic limited liability company party to the merger are entitled only to the rights provided in the plan of merger.

1992, c. 575; 1997, c. 190; 2003, c. 340.

§ 13.1-1073.1. Abandonment of merger

A. Unless otherwise provided in a plan of merger or in the laws under which a foreign limited liability company or a domestic or foreign other business entity that is a party to a merger is organized or by which the merger is governed, after the plan has been approved as required by this article, and at any time before the certificate of merger has become effective, it may be abandoned by a domestic limited liability company that is a party thereto without action by members in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, by a vote of the members of the limited liability company that is equal to or greater than the vote cast for the plan of merger pursuant to § 13.1-1071, subject to any contractual rights of other parties to the merger.

B. If a merger is abandoned under subsection A after articles of merger have been filed with the Commission but before the certificate of merger has become effective, a statement that the merger has been abandoned in accordance with this section, signed on behalf of a party to the merger, shall be delivered to the Commission for filing before the effective time and date of the certificate of merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

2016, c. 288.

Article 14 - DOMESTICATION

§ 13.1-1074. Domestication

A. A foreign limited liability company may become a domestic limited liability company if the laws of the jurisdiction in which the foreign limited liability company is organized authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic limited liability company not required by law to be a domestic limited liability company may become a foreign limited liability company if the jurisdiction in which the limited liability company intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the limited liability company domesticates shall govern the effect of domesticating in that jurisdiction.

2006, c. 912; 2013, c. 17.

§ 13.1-1075. Plan of domestication

A. The plan of domestication shall set forth:

1. The name of the state or other jurisdiction under whose laws the domestic or foreign limited liability company is organized;

2. A statement of the jurisdiction in which the domestic or foreign limited liability company is to be domesticated;

3. The terms and conditions of the domestication, provided that such terms and conditions may not alter the ownership proportion and relative rights, preferences, and limitations of the interests of the limited liability company; and

4. For a foreign limited liability company that is to become a domestic limited liability company, as a referenced attachment, amended and restated articles of organization that comply with § 13.1-1011 as they will be in effect upon consummation of the domestication.

B. The plan of domestication may include any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the members may amend the plan at any time prior to the effective date of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication.

2006, c. 912; 2012, c. 130.

§ 13.1-1076. Action on plan of domestication by a domestic limited liability company

In the case of a domestic limited liability company, unless the articles of organization or a written operating agreement of the limited liability company provides otherwise, the members of the limited liability company shall approve the plan of domestication in the manner provided in the limited liability company's operating agreement for amendments to the operating agreement by the members or, if no provision is made in an operating agreement, by all the members.

2006, c. 912; 2016, c. 288.

§ 13.1-1077. Articles of domestication

A. After the domestication of a foreign limited liability company to a domestic limited liability company is approved in the manner required by the laws of the jurisdiction in which the limited liability company is organized, the limited liability company shall deliver to the Commission for filing articles of domestication setting forth:

1. The name of the foreign limited liability company immediately before the filing of the articles of domestication and the name of the limited liability company upon its domestication as a domestic limited liability company, which shall satisfy the requirements of § 13.1-1012;

2. The date on which the foreign limited liability company was originally formed, organized, or incorporated, and its original name, entity type, and jurisdiction of formation, organization, or incorporation, and, for each subsequent change of entity type or jurisdiction of formation, organization, or incorporation made before the filing of the articles of domestication, the effective date of the change and the limited liability company's name, entity type, and jurisdiction of formation, organization, or incorporation upon consummation of the change;

3. The plan of domestication, including the full text of the amended and restated articles of organization of the domestic limited liability company that comply with the requirements of this chapter, as they will be in effect upon consummation of the domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the foreign limited liability company is organized and that the foreign limited liability company has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to subsection D of § 13.1-1004.

D. A foreign limited liability company's existence as a domestic limited liability company shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign limited liability company have been complied with and that the limited liability company has been organized under this chapter.

E. If the foreign limited liability company is authorized to transact business in the Commonwealth under Article 10 (§ 13.1-1051 et seq.), its certificate of registration shall be canceled automatically on the effective time and date of the certificate of domestication issued by the Commission.

2006, c. 912; 2012, c. 130; 2013, c. 17; 2016, c. 288.

§ 13.1-1078. Surrender of articles of organization upon domestication

A. Whenever a domestic limited liability company has approved, in the manner required by this article, a plan of domestication providing for the limited liability company to be domesticated under the laws of another jurisdiction, the limited liability company shall deliver to the Commission for filing articles of organization surrender setting forth:

1. The name of the limited liability company immediately before the filing of the articles of organization surrender;

2. The jurisdiction in which the limited liability company is to be domesticated and the name of the limited liability company upon its domestication under the laws of that jurisdiction;

3. The plan of domestication;

4. A statement that the plan of domestication was adopted by the limited liability company in accordance with § 13.1-1076;

5. A statement that the articles of organization surrender are being filed in connection with the domestication of the limited liability company as a foreign limited liability company to be organized under the laws of another jurisdiction and that the limited liability company is surrendering its certificate of organization under the laws of this Commonwealth;

6. A statement that the limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was organized in the Commonwealth;

7. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 6; and

8. A commitment by the limited liability company to notify the clerk of the Commission in the future of any change in the mailing address of the limited liability company.

B. If the Commission finds that the articles of organization surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of organization surrender.

C. The limited liability company shall automatically cease to be a domestic limited liability company when the certificate of organization surrender becomes effective.

D. If the former domestic limited liability company intends to continue to transact business in the Commonwealth, then, within thirty days after the effective date of the certificate of organization surrender, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth pursuant to § 13.1-1052 together with a copy of its instrument of domestication and articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose laws it is organized or domesticated.

2006, c. 912; 2009, c. 201; 2016, c. 288.

§ 13.1-1079. Effect of domestication

A. When a foreign limited liability company's certificate of domestication in this Commonwealth becomes effective, with respect to that limited liability company:

1. The title to all real estate and other property remains in the limited liability company without reversion or impairment;

2. The liabilities remain the liabilities of the limited liability company;

3. A proceeding pending may be continued by or against the limited liability company as if the domestication did not occur;

4. The articles of organization attached to the articles of domestication constitute the articles of organization of the limited liability company; and

5. The limited liability company is deemed to:

a. Be organized under the laws of this Commonwealth for all purposes;

b. Be the same limited liability company as the limited liability company that existed under the laws of the jurisdiction or jurisdictions in which it was originally organized or formerly domesticated; and

c. Have been organized on the date it was originally formed or organized.

B. Any member of a foreign limited liability company that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the limited liability company is not released from those liabilities or obligations by reason of the domestication.

2006, c. 912.

§ 13.1-1080. Abandonment of domestication

A. Unless otherwise provided in a plan of domestication of a domestic limited liability company to become a foreign limited liability company, after the plan has been approved as required by this article, and at any time before the certificate of organization surrender has become effective, the domestication may be abandoned without action by the members in accordance with any procedures set forth in the plan of domestication or, if no procedures are set forth in the plan, by a vote of the members of the domestic limited liability company that is equal to or greater than the vote cast for the plan of domestication pursuant to § 13.1-1076.

B. If a domestication is abandoned under subsection A after articles of organization surrender have been filed with the Commission but before the certificate of organization surrender has become effective, a statement that the domestication has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of organization surrender. Upon filing, the statement shall take effect and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign limited liability company into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign limited liability company is organized after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, a statement that the domestication has been abandoned shall be delivered to the Commission for filing before the effective time and date of the certificate of domestication. Upon filing, the statement shall take effect and the domestication shall be deemed abandoned and shall not become effective.

2006, c. 912; 2016, c. 288.

Article 15 - CONVERSION

§ 13.1-1081. Definitions

As used in this article:

"Articles of incorporation" has the same meaning as specified in § 13.1-603.

"Articles of trust" has the same meaning as specified in § 13.1-1201.

"Certificate of limited partnership" has the same meaning as specified in § 50-73.1.

"Converting entity" means the domestic limited liability company, partnership, or limited partnership that adopts a plan of entity conversion pursuant to this article.

"Partnership agreement, " as to a limited partnership, has the same meaning as specified in § 50-73.1, and, as to a partnership, has the same meaning as specified in § 50-73.79.

"Resulting entity" means the domestic stock corporation, business trust, or limited liability company that is in existence upon consummation of an entity conversion pursuant to this article.

"Stock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-603.

2016, c. 288.

§ 13.1-1082. Entity conversion

A. A domestic limited liability company may become a domestic stock corporation or a domestic business trust pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of this article.

B. A domestic stock corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9.

C. A domestic nonstock corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of Article 17.1 (§ 13.1-944.1 et seq.) of Chapter 10.

D. A domestic business trust may become a domestic limited liability company pursuant to a plan of entity conversion that is approved by the business trust in accordance with the provisions of Article 12 (§ 13.1-1264 et seq.) of Chapter 14.

E. Unless otherwise provided for in Chapter 2.2 (§ 50-73.79 et seq.) of Title 50, a domestic partnership that has filed either a statement of partnership authority or a statement of registration as a registered limited liability partnership with the Commission that is not canceled may become a domestic limited liability company pursuant to a plan of entity conversion that is approved by the domestic partnership in accordance with the provisions of this article.

F. Unless otherwise provided for in Chapter 2.1 (§ 50-73.1 et seq.) of Title 50, a domestic limited partnership that has filed a certificate of limited partnership with the Commission that is not canceled may become a domestic limited liability company pursuant to a plan of entity conversion that is approved by the domestic limited partnership in accordance with the provisions of this article.

2016, c. 288.

§ 13.1-1083. Plan of entity conversion

A. In the case of a domestic limited liability company that is a converting entity:

1. The limited liability company shall approve a plan of entity conversion setting forth:

a. A statement of the limited liability company's intention to convert to a domestic stock corporation or business trust;

b. The terms and conditions of the conversion, including the manner and basis of converting the membership interests of the limited liability company into shares of the stock corporation or beneficial interests of the business trust, preserving the ownership proportion and relative rights, preferences, and limitations of each membership interest of the converting entity;

c. As an attachment to the plan, the full text of the articles of incorporation or articles of trust of the converting entity as they will be in effect upon consummation of the conversion; and

d. Any other provision relating to the conversion that may be desired.

2. The plan of entity conversion may also include a provision that the plan may be amended before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the converting entity, unless the amendment has been approved by the members in the manner set forth in § 13.1-1084.

B. In the case of a domestic partnership or limited partnership that is a converting entity:

1. The partnership or limited partnership shall approve a plan of entity conversion setting forth:

a. A statement of the partnership's or limited partnership's intention to convert to a domestic limited liability company;

b. The terms and conditions of the conversion, including the manner and basis of converting the partnership interests of the partnership or limited partnership into membership interests of the limited liability company, preserving the ownership proportion and relative rights, preferences, and limitations of each partnership interest;

c. As an attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and

d. Any other provision relating to the conversion that may be desired.

2. The plan of entity conversion may also include a provision that the plan of entity conversion may be amended before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan:

a. To the partners of a partnership shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the partnership interests of the partnership, unless the amendment is approved by the partners in the manner set forth in § 13.1-1084; and

b. To the partners of a limited partnership shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the partnership interests of the limited partnership, unless the amendment is approved by the partners in the manner set forth in § 13.1-1084.

2016, c. 288.

§ 13.1-1084. Action on plan of entity conversion

A. In the case of a domestic limited liability company that is the converting entity:

1. If the limited liability company has members, unless the articles of organization or a written operating agreement of the limited liability company provides otherwise, the members shall approve the plan of entity conversion in the manner provided in the limited liability company's operating agreement for amendments to the operating agreement by the members or, if no provision is made in the operating agreement, by all the members; and

2. If the limited liability company has been formed without any members and no members have been admitted, the plan of entity conversion shall be approved by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

B. In the case of a partnership that is a converting entity, unless a written partnership agreement of the partnership provides otherwise, the plan of entity conversion shall be approved by the partners of the partnership in the manner provided in a written partnership agreement for amendments to the partnership agreement by the partners or, if no provision is made in the partnership agreement, by all the partners.

C. In the case of a limited partnership that is a converting entity, unless the certificate of limited partnership or a written partnership agreement of the limited partnership provides otherwise, the plan of entity conversion shall be approved by the partners of the limited partnership in the manner provided in a written partnership agreement for amendments to the partnership agreement by the partners or, if no provision is made in the partnership agreement, by all the partners.

2016, c. 288.

§ 13.1-1085. Articles of entity conversion

A. After the conversion of a domestic limited liability company into a domestic stock corporation or business trust has been approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the domestic limited liability company immediately before the filing of the articles of entity conversion and the name of the converting entity upon its conversion to a domestic stock corporation or business trust, which shall satisfy the requirements of § 13.1-630 or 13.1-1214, as the case may be;

2. The date on which the converting entity was originally organized, formed, or incorporated, and its original name, entity type, and jurisdiction of organization, formation, or incorporation, and, for each subsequent change of entity type or jurisdiction of organization, formation, or incorporation made before the filing of the articles of entity conversion, the effective date of the change and the converting entity's name, entity type, and jurisdiction of organization, formation, or incorporation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of incorporation or articles of trust of the resulting entity that comply with the requirements of Chapter 9 (§ 13.1-601 et seq.) or Chapter 14 (§ 13.1-1200 et seq.), as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement that the plan of entity conversion was adopted by the limited liability company in accordance with § 13.1-1084.

B. After the conversion of a domestic partnership or limited partnership into a domestic limited liability company has been approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the domestic partnership or limited partnership immediately before the filing of the articles of entity conversion and the name of the converting entity upon its conversion to a domestic limited liability company, which shall satisfy the requirements of this chapter;

2. The date on which the converting entity was originally organized, formed, or incorporated, and its original name, entity type, and jurisdiction of organization, formation, or incorporation, and, for each subsequent change of entity type or jurisdiction of organization, formation, or incorporation made before the filing of the articles of entity conversion, the effective date of the change and the converting entity's name, entity type, and jurisdiction of organization, formation, or incorporation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of this chapter as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement that the plan of entity conversion was adopted by the partnership or limited partnership in accordance with § 13.1-1084.

C. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2016, c. 288.

§ 13.1-1086. Effect of entity conversion

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities of the converting entity remain the liabilities of the resulting entity; and

3. A proceeding pending may be continued by or against the resulting entity as if the conversion did not occur.

B. When the resulting entity is a domestic stock corporation or business trust:

1. The articles of incorporation or articles of trust attached to the articles of entity conversion constitute the articles of incorporation or articles of trust of the resulting entity;

2. The interests of the converting entity are reclassified into shares or beneficial interests of the resulting entity in accordance with the plan of entity conversion; and the members of the converting entity are entitled only to the rights provided in the plan of entity conversion;

3. The resulting entity is deemed to:

a. Be a domestic stock corporation or business trust, as the case may be, for all purposes;

b. Be the same stock corporation or business trust without interruption as the converting entity that existed before the conversion; and

c. Have been incorporated or formed on the date that the converting entity was originally incorporated, organized, or formed;

4. The converting entity shall cease to be a limited liability company when the certificate of entity conversion becomes effective; and

5. Any member of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

C. When the converting entity is a partnership or a limited partnership:

1. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

2. The eligible interests of the converting entity are reclassified into membership interests in accordance with the plan of entity conversion; and the partners of the converting entity are entitled only to the rights provided in the plan of entity conversion;

3. The resulting entity is deemed to:

a. Be a domestic limited liability company for all purposes;

b. Be the same limited liability company without interruption as the converting entity that existed before the conversion; and

c. Have been organized on the date that the converting entity was originally formed, organized, or incorporated;

4. The converting entity shall cease to be a partnership or limited partnership when the certificate of entity conversion becomes effective;

5. If the converting entity is a partnership, a statement of partnership authority filed by the partnership that has not been canceled shall be deemed canceled when the certificate of entity conversion becomes effective;

6. If the converting entity is a limited partnership, its certificate of limited partnership shall be deemed canceled when the certificate of entity conversion becomes effective;

7. If the partnership or limited partnership is registered as a registered limited liability partnership, that status shall be deemed canceled when the certificate of entity conversion becomes effective; and

8. Any partner of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2016, c. 288.

§ 13.1-1087. Abandonment of entity conversion

A. Unless otherwise provided in a plan of entity conversion of a domestic limited liability company to become a domestic stock corporation or business trust, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the limited liability company without action by the members in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan of entity conversion, by a vote of the members, managers, or organizers of the limited liability company that is equal to or greater than the vote cast for entity conversion pursuant to subsection A of § 13.1-1084.

B. Unless otherwise set forth in a plan of entity conversion of a domestic partnership to become a domestic limited liability company, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the partnership without action by the partners in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan of entity conversion, by a vote of the partners of the domestic partnership that is equal to or greater than the vote cast for the plan of entity conversion pursuant to subsection B of § 13.1-1084.

C. Unless otherwise set forth in a plan of entity conversion of a domestic limited partnership to become a limited liability company, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the domestic limited partnership without action by the partners in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan of entity conversion, by a vote of the partners of the domestic limited partnership that is equal to or greater than the vote cast for the plan of entity conversion pursuant to subsection C of § 13.1-1084.

D. If an entity conversion is abandoned under subsection A, B, or C after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2016, c. 288.

Chapter 13 - VIRGINIA PROFESSIONAL LIMITED LIABILITY COMPANY ACT

§ 13.1-1100. Reservation of power to amend or repeal

The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign professional limited liability companies subject to this chapter shall be governed by the amendment or repeal.

1992, c. 574 .

§ 13.1-1101. Legislative purpose

It is the legislative intent to provide for the association of a group of individuals and professional corporations, professional limited liability companies, or other business entities formed to provide professional services as a limited liability company to render the same professional service to the public for which those individuals or other business entities are required by law to be licensed or to obtain other legal authorization from the Commonwealth of Virginia.

1992, c. 574 .

§ 13.1-1101.1. Practice of certain professions by limited liability companies

Unless otherwise prohibited by law or regulation, the professional services defined in subsection A of § 13.1-1102 may be rendered in this Commonwealth by:

1. A limited liability company organized as a professional limited liability company pursuant to the provisions of this chapter;

2. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of this chapter;

3. A limited liability company organized pursuant to the provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title; or

4. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title.

2003, c. 678.

§ 13.1-1102. Definitions

A. As used in this chapter:

"Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under whose laws the entity is formed to render the same professional service as that for which a professional corporation or professional limited liability company may be organized, including, but not limited to, (i) a professional limited liability company as defined in this subsection, (ii) a professional corporation as defined in subsection A of § 13.1-543, or (iii) a partnership that is registered as a registered limited liability partnership under § 50-73.132, all of the partners of which are duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional limited liability company" means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers, land surveyors, or landscape architects, or using a title other than that of certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only individuals or professional business entities that are duly licensed or otherwise legally authorized to render the same professional service as the professional limited liability company or (ii) organized under this chapter for the sole and specific purpose of rendering professional service of architects, professional engineers, land surveyors, or landscape architects or using the title of certified interior designers, or any combination thereof, and at least two-thirds of whose membership interests are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer, land surveyor, or landscape architect, or by persons legally authorized within the Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and audiology or speech pathology and all of whose members are individuals or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders

mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct that person's practice in a manner contrary to the standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of that service or the use of that title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified interior designers, public accountants, certified public accountants, attorneys at law, insurance consultants, audiologists or speech pathologists and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional services:

1. Architects, professional engineers, and land surveyors; and

2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing.

B. (Effective until October 1, 2016) Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23-14.

B. (Effective October 1, 2016) Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23.1-1101.

C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same meanings for purposes of this chapter.

1992, c. 574; 1993, c. 113; 1994, c. 349; 1996, c. 265; 1999, c. 83; 2000, cc. 194, 688, 763; 2003, c. 678; 2008, c. 265; 2009, c. 309.

§ 13.1-1103. Who may become a member

One or more individuals or professional business entities (i) duly licensed or otherwise legally authorized to render the same professional services other than those of architects, professional engineers or land surveyors, or to use a title other than those of certified landscape architects or certified interior designers, of which at least one is duly licensed or otherwise legally authorized to render such professional services within the Commonwealth or (ii) complying with the provisions of § 13.1-1111 and duly licensed to render within the Commonwealth the professional services of architects, professional engineers or land surveyors, or legally authorized to use within the Commonwealth the title of certified landscape architects or certified interior designers, or any combination thereof, may become members of a limited liability company for pecuniary profit under the provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent with the provisions of this chapter, which are applicable to the practice of that profession in the limited liability company form.

1992, c. 574; 1994, c. 349; 1997, c. 133; 2000, c. 763.

§ 13.1-1104. Use of initials "P.L.C.," "PLC," "P.L.L.C." or "PLLC" in company name

Any professional limited liability company as defined in § 13.1-1102 may, but is not required to, use the initials "P.L.C.," "PLC," "P.L.L.C." or "PLLC," or the phrase "professional limited company," "a professional limited company," "professional limited liability company," or "a professional limited liability company," at the end of its limited liability company name. Such initials or phrase may be used in the place of any words or abbreviation required by subsection A of § 13.1-1012.

1992, c. 574; 1996, c. 265; 2002, c. 608; 2003, c. 592.

§ 13.1-1105. Certificate of authority for foreign professional limited liability company

A. Notwithstanding any other provision of this chapter, a foreign professional limited liability company, organized under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in § 13.1-1102, may apply for and obtain a certificate of authority to render those professional services in Virginia on the following terms and conditions:

1. Only members, managers, employees, and agents licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia.

2. The professional limited liability company must meet every requirement of this chapter except for the requirement that all of its members and managers be licensed to perform the professional service in this Commonwealth.

3. The powers of any foreign professional limited liability company admitted under this section shall not exceed the powers permitted to domestic professional limited liability companies under this chapter.

B. In order to qualify, a foreign professional limited liability company shall make application to the Commission as provided in § 13.1-1052 and shall make the application for and secure any certificate of authority, registration or registration certificate may be required by §§ 13.1-1111, 13.1-1112 or § 13.1-1113 and, in addition, shall be required to set forth the name and address of each member, manager, employee, and agent of the limited liability company who will be providing the professional service in this Commonwealth and whether those members, managers, employees, and agents are licensed, or otherwise legally qualified, to perform the professional service in Virginia.

1992, c. 574; 1996, c. 265.

§ 13.1-1106. Merger with foreign professional limited liability company or foreign professional corporation

Any limited liability company organized under this chapter may merge with one or more foreign professional limited liability companies that have obtained a certificate of registration to transact business in the Commonwealth pursuant to § 13.1-1105, or one or more foreign professional corporations that have obtained a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-544.2, only if the professional limited liability companies and the professional corporations are organized to render the same professional services, provided that (i) the merger is permitted by the laws of the jurisdiction under which each such foreign professional limited liability company or foreign professional corporation is organized, (ii) if the surviving or new professional business entity is a professional limited liability company organized and operating under the laws of the Commonwealth, all of its members and managers shall be licensed or otherwise legally authorized to render the same professional service as the limited liability company, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its membership interests shall be held by individuals or professional business entities that are licensed or otherwise legally authorized within the Commonwealth to render the applicable service, and (iii) if the surviving or new professional business entity is a professional corporation organized and operating under the laws of the Commonwealth, all of its shareholders shall be licensed or otherwise legally authorized to render the same professional service as the professional corporation, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its shares shall be held by individuals who are licensed or otherwise legally authorized within the Commonwealth to render the applicable service.

1992, c. 574; 1994, c. 349; 2008, c. 509.

§ 13.1-1107. How limited liability company may render professional services; non-professional employees and agents; members and managers need not be employees, etc

No limited liability company organized under this chapter may render professional services except through its members, managers, employees, independent contractors, and agents who are duly licensed or otherwise legally authorized to render those professional services, and only members, managers, employees, independent contractors, and agents licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia. However, this provision shall not be interpreted to preclude clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional service to the public for which a license or other legal authorization is required from acting as employees, managers and agents of a professional limited liability company and performing their usual duties or from acting as employees, independent contractors, managers or agents of a professional limited liability company. Nothing contained in this chapter shall be interpreted to require that the right of an individual to be a member or manager of a limited liability company organized under this chapter, or to organize that limited liability company, is dependent upon the present or future existence of an employment relationship between that individual and that limited liability company, or that individual's present or future active participation in any capacity in the production of the income of that limited liability company or in the performance of the services rendered by that limited liability company.

1992, c. 574; 1994, c. 349; 2003, c. 786.

§ 13.1-1108. Professional law limited liability company may qualify as executor, administrator or in other fiduciary capacity

A professional limited liability company engaged in the practice of law, as a part of the practice of law, may act as an executor, trustee or administrator of an estate, guardian for an infant, or in any other fiduciary capacity. Any member, manager, employee or agent of a professional limited liability company engaged in the practice of law who is duly licensed as an attorney in the Commonwealth may perform necessary fiduciary responsibilities on behalf of the professional limited liability company.

1992, c. 574 .

§ 13.1-1109. Professional relationships not affected; liability for debts, etc., of limited liability company, its members, managers, employees, and agents

The provisions of this chapter shall not be construed to alter or affect the professional relationship between a person furnishing professional services and a person receiving that service either with respect to liability arising out of that professional service or the confidential relationship between the person rendering the professional service and the person receiving that professional service, if any, and all confidential relationships enjoyed under the laws of this Commonwealth, whether now in existence, or hereafter enacted, shall remain inviolate. A member, manager, agent or employee of a professional limited liability company shall not, by reason of being any member,

manager, agent or employee of a professional limited liability company, be personally liable for any debts or claims against, or the acts or omissions of the professional limited liability company or of another member, manager, agent or employee of the professional limited liability company, but the professional limited liability company shall be liable for the acts or omissions of its members, managers, agents, employees and servants to the same extent to which any other limited liability company would be liable for the acts or omissions of its members, managers, agents, employees and servants while they are engaged in carrying on the limited liability company business.

1992, c. 574 .

§ 13.1-1110. Professional limited liability company not to engage in other business; investment of funds

No professional limited liability company organized under this chapter may engage in any business other than the rendering of the professional services for which it was specifically organized; however, nothing in this chapter or in any other provisions of existing law applicable to limited liability companies shall be interpreted to prohibit that limited liability company from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, from owning real or personal property, or from exercising any other investment power granted to limited liability companies under this title and not in conflict with the provisions of this chapter.

1992, c. 574; 1996, c. 265.

§ 13.1-1111. Qualifications of members and managers; special provisions for limited liability companies rendering service of architects, professional engineers, land surveyors and landscape architects, and using the title of certified interior designers

Not less than two-thirds of the membership interests of a professional limited liability company rendering the services of architects, professional engineers, land surveyors, or landscape architects, or using the title of certified interior designers, or any combination thereof, shall be held by individuals duly licensed or professional business entities legally authorized to render the services of architects, professional engineers, land surveyors, or landscape architects, or by individuals or professional business entities legally authorized to use the title of certified interior designers, and the remainder of the membership interests may be held only by individuals who are employees of the professional limited liability company whether or not those employees are licensed to render professional services or authorized to use a title. For those professional limited liability companies using the title of certified interior designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, not less than two-thirds of the membership interests of the professional limited liability company shall be held by individuals who are duly licensed. No other professional limited liability company, except for a professional limited liability company engaged in the practice of accounting as described in § 13.1-1112, may have as a member anyone other than an individual or a professional business entity that is duly licensed or

otherwise legally authorized to render the same professional services as those for which the professional limited liability company was organized.

As an additional prerequisite for a professional limited liability company's engaging in the practice of the professions of architecture, professional engineering, land surveying, or landscape architecture, or using the title of certified interior designer, or any combination thereof, that professional limited liability company shall secure a certificate of authority, which may be renewable and may be either general or limited, from the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. The certificate of authority shall be issued or renewed by the Board when in its discretion the professional limited liability company is in compliance with rules and regulations which shall be promulgated by the Board consistent with its jurisdiction to provide adequate safeguards for the public's health, welfare and safety. The fees for a certificate of authority as described above shall be the same fees as provided for in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1.

1992, c. 574; 1998, c. 27; 2000, cc. 191, 763; 2009, c. 309.

§ 13.1-1112. Special provision for limited liability company engaged in practice of accounting

Before any professional limited liability company may engage in the practice of accounting in this Commonwealth, it shall first obtain and maintain any registration required for that professional limited liability company by Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1. Not less than fifty-one percent of the membership interests of a professional limited liability company rendering the services of accounting shall be held by individuals or professional business entities duly licensed or otherwise legally authorized to render the services of accounting, and the remainder of the membership interests may be held only by individuals who are employees of the professional limited liability company, whether or not those employees are licensed or otherwise authorized to render professional services.

1992, c. 574; 2000, c. 191.

§ 13.1-1113. Registration certificate required for limited liability company engaged in practice of law

Before any professional limited liability company may engage in the practice of law in this Commonwealth, it shall first obtain and maintain a registration certificate required for that professional limited liability company by Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

1992, c. 574 .

§ 13.1-1114. Repealed

Repealed by Acts 1994, c. 349.

§ 13.1-1115. Transfer of membership interests

A. No member of a professional limited liability company organized under this chapter may sell, assign in whole or in part, or otherwise transfer that member's membership interest in the

professional limited liability company except to (i) the professional limited liability company, (ii) another individual or professional business entity that is eligible to be a member of that professional limited liability company, or (iii) a qualified charitable remainder trust as described in subsection B. In the case of a professional limited liability company rendering the services of architects, professional engineers, land surveyors and certified landscape architects, or any combination thereof, no person or professional business entity which is not duly licensed or otherwise legally authorized to render one of those services will be eligible unless at least two-thirds of the remaining membership interests after the sale or transfer are held by persons or professional business entities duly licensed or otherwise legally authorized to perform one of those services.

B. As used in this section, "qualified charitable remainder trust" means a trust meeting the requirements of § 664 of the United States Internal Revenue Code of 1986, as amended, and which meets all of the following conditions:

1. Has one or more current income beneficiaries, all of which are eligible to be members in the professional limited liability company under § 13.1-1103.

2. Has a trustee or independent special trustee who:

a. Is eligible to have a membership interest in the professional limited liability company under § 13.1-1103; and

b. Has exclusive authority over the membership interests while such interests are held in the trust.

3. Has one or more irrevocably designated charitable remaindermen, all of which must at all times be domiciled or maintain a local chapter in the Commonwealth of Virginia.

4. When transferring any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in § 170(c) of the Internal Revenue Code that are domiciled or maintain a local chapter in this Commonwealth.

1992, c. 574; 1999, c. 100.

§ 13.1-1116. Disqualification of member, manager, agent or employee

If any member, manager, agent or employee of a professional limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render those professional services within this Commonwealth, that member, manager, agent or employee shall immediately sever all employment with, and financial interests in, that professional limited liability company except that the member, manager, agent or employee may be a member subject to the provisions of this chapter. A professional limited liability company's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of organization and the cancellation of its existence by the State Corporation Commission.

1992, c. 574; 2009, c. 201.

§ 13.1-1117. Conversion into nonprofessional company; disposition of membership interests of deceased or disqualified members

A. A professional limited liability company organized under this chapter shall continue until dissolved in accordance with other provisions of this chapter or the provisions of Article 9 (§ 13.1-1046 et seq.) of Chapter 12 of this title.

B. Whenever all members of a professional limited liability company licensed under this chapter cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which the professional limited liability company was organized, or by the vote of the holders of at least two-thirds of its membership interests, the professional limited liability company thereupon shall be treated as converted into, and shall operate henceforth solely as, a limited liability company under applicable provisions of this title, exclusive of this chapter, but may be reconverted upon removal of the disability or by the vote of the holders of at least two-thirds of its membership interests.

C. Following the occurrence of any event that terminates the continued membership of a member in a professional limited liability company, including a disqualification that terminates a member's membership as provided in § 13.1-1116, the limited liability company shall pay to the former member or the former member's successor in interest the value of the interest of the former member. The time of payment and value of the interest of the former member shall be determined in the manner provided in writing in the articles of organization or an operating agreement of the limited liability company, and to the extent not so provided in the articles of organization or an operating agreement, the payment shall be made within one year following the occurrence of the event that terminates the former member's membership and for the book value of the interest, determined as of the end of the month immediately preceding the event that terminated the membership of the former member. If applicable, the book value shall be determined from the books and records of the limited liability company in accordance with the generally accepted accounting principles on the accrual method of accounting. No subsequent adjustment of this book value, whether by the limited liability company itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the amount of the payment to be made.

D. An arrangement or provision in the articles of organization, operating agreement or by contract may be made to transfer any membership interest held by a disqualified charitable remainder trust to the professional limited liability company or to persons qualified to hold such an interest under § 13.1-1103, whether made before or after the disqualification of a charitable remainder trust, provided that the membership interest involved shall have been so transferred within one year following such disqualification.

1992, c. 574; 1995, c. 168; 1996, c. 265; 1999, c. 100; 2009, c. 763.

§ 13.1-1118. Management

Unless the articles of organization or an operating agreement provides for management of a professional limited liability company by a manager or managers, management of a professional limited liability company shall be vested in its members. If the articles of organization or an

operating agreement provides for management of a professional limited liability company by a manager or managers, the manager shall be an individual or professional business entity duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth that the professional limited liability company was organized for the purpose of rendering. Only members or managers duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth shall supervise and direct the provision of professional services within this Commonwealth, or delegate to their agents, officers, and employees or delegate by a management agreement or another agreement with, or otherwise to, other persons managerial duties and tasks related to the professional limited liability company's operations.

1992, c. 574; 2007, c. 629.

§ 13.1-1119. Repealed

Repealed by Acts 2002, ch. 346 .

§ 13.1-1120. Income and property taxes

All professional limited liability companies organized or qualifying under the provisions of this chapter shall be treated for income tax purposes under the provisions of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 in the manner determined under § 58.1-301, and property owned by professional limited liability companies shall be taxed in the actual form in which it may exist and not as capital.

1992, c. 574 .

§ 13.1-1121. Merger

A professional limited liability company operating pursuant to the terms of this chapter may merge with one or more corporations, limited liability companies, or domestic partnerships only if the surviving corporation, limited liability company, or domestic partnership is a professional corporation, a professional limited liability company, or a domestic partnership all of the partners of which are professional corporations, professional limited liability companies, or individuals duly licensed or otherwise legally authorized to render the same professional services as those for which the surviving professional corporation, professional limited liability company or domestic partnership was incorporated or organized.

1992, c. 574; 1996, c. 265; 2008, c. 509.

§ 13.1-1122. Application of Chapter 12 of this title

The provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title shall be applicable to professional limited liability companies organized under the provisions of this chapter. Where a conflict arises between the provisions found in Chapter 12 (§ 13.1-1000 et seq.) of this title and this chapter, this chapter shall control.

1992, c. 574 .

§ 13.1-1123. Coordination with other provisions of Virginia Code

For purposes of all sections of this Code other than sections in Chapter 7 (§ 13.1-542 et seq.) and in this chapter, whenever the term "professional corporation" is used, that term shall be deemed to include a professional limited liability company and wherever the terms "shareholder," "employee," "officer" or "agent" are used those terms shall be deemed to include, as appropriate, the terms member, manager, employee and agent.

1992, c. 574; 2007, cc. 233, 639.

Chapter 14 - VIRGINIA BUSINESS TRUST ACT

Article 1 - GENERAL PROVISIONS

§ 13.1-1200. Short title

This chapter shall be known as the Virginia Business Trust Act.

2002, c. 621.

§ 13.1-1201. Definitions

As used in this chapter:

"Articles of trust" means all documents constituting, at any particular time, the articles of trust of a business trust. Articles of trust includes the original articles of trust, the original certificate of trust issued by the Commission, and all amendments to the articles of trust. When the articles of trust have been restated pursuant to any articles of amendment, the articles of trust includes only the restated articles of trust and any subsequent amendments to the restated articles of trust, but does not include the articles of amendment accompanying the restated articles of trust.

"Beneficial owner" means any owner of a beneficial interest in a business trust, the fact of ownership to be determined and evidenced, whether by means of registration, the issuance of certificates or otherwise, in conformity to the applicable provisions of the governing instrument of the business trust.

"Business trust" or "domestic business trust" means an unincorporated business, trust, or association that:

A. Is governed by a governing instrument under which:

1. Property is or will be held, managed, administered, controlled, invested, reinvested, or operated by a trustee for the benefit of persons as are or may become entitled to a beneficial interest in the trust property; or

2. Business or professional activities for profit are carried on or will be carried on by one or more trustees for the benefit of persons as are or may become entitled to a beneficial interest in the trust property; and

B. Files articles of trust under § 13.1-1212.

C. "Business trust" includes, without limitation, any of the following entities that conform with subsections A and B of this definition:

1. A trust of the type known at common law as a "business trust" or "Massachusetts trust;"

2. A trust qualifying as a real estate mortgage investment conduit under § 860 D of the United States Internal Revenue Code of 1986, as amended, or under any successor provision;

3. A trust qualifying as a real estate investment trust under §§ 856 through 859 of the United States Internal Revenue Code of 1986, as amended, or under any successor provision; or

4. A "real estate investment trust" or "trust" created under former Chapter 9 (§ 6-577 et seq.) of Title 6 or former Chapter 9 (§ 6.1-343 et seq.) of Title 6.1.

"Commission" means the State Corporation Commission of Virginia.

"Foreign business trust" means a business trust formed under the laws of any jurisdiction other than this Commonwealth and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Governing instrument" means a trust instrument that creates a business trust and provides for the governance of the affairs of the business trust and the conduct of its business, including, without limitation, a declaration of trust.

"Other business entity" means a corporation, a professional corporation, a general or limited partnership, a registered limited liability partnership, common law trust, a limited liability company, a professional limited liability company, or any other unincorporated business. "Other business entity" shall not include a business trust.

"Person" has the same meaning as specified in § 13.1-603.

"State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions; and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

"Trustee" means a person appointed as a trustee in accordance with the governing instrument of a business trust. "Trustee" may include a beneficial owner of a business trust.

"United States" includes any district, authority, bureau, commission, department, or other agency of the United States.

2002, c. 621.

§ 13.1-1202. Filing requirements

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may also contain other information.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A business trust name need not be in English if written in English letters or Arabic or Roman numerals. The articles of trust, duly authenticated by the official having custody of the applicable records in the state or other jurisdiction under whose law the business trust is formed, which are required of each foreign business trust, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign business trust:

1. By a trustee or by an officer of the business trust;

2. If the business trust has not been formed, by the person forming the business trust; or

3. If the business trust is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information.

2002, c. 621; 2013, c. 25.

§ 13.1-1203. Issuance of certificate by Commission; recordation of documents

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a business trust shall begin at the time the Commission issues a certificate of trust, unless a later date and time are specified as provided by subsection D. The certificate of trust shall be conclusive evidence that all conditions precedent required to be performed by the person or persons forming the business trust have been complied with and that the business trust has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

D.1. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event, the certificate shall become effective at the earlier of the time and date so specified or at 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission, and the Commission, by order, cancels the certificate.

3. Notwithstanding subdivision 1, for purposes of §§ 13.1-1214 and 13.1-1244, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

E. The Commission shall have the power to act upon a petition filed by a business trust at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the business trust.

2002, c. 621; 2013, c. 25.

§ 13.1-1204. Fees for filing documents and issuing certificates

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing any one of the following, the fee shall be $100:

a. Articles of trust.

b. An application for registration as a foreign business trust.

c. Articles of domestication.

d. Articles of entity conversion.

2. For filing any one of the following, the fee shall be $25:

a. Articles of amendment.

b. Articles of restatement.

c. Articles of cancellation.

d. Articles of correction referred to in § 13.1-1213, a copy of an amendment or a correction referred to in § 13.1-1245, or an amended application for registration referred to in § 13.1-1245, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 13.1-1245.

e. A copy of an instrument of merger of a foreign business trust referred to in § 13.1-1250.

f. Articles of merger.

g. Articles of trust surrender.

h. A copy of an instrument of entity conversion of a foreign business trust holding a certificate of registration to transact business in the Commonwealth.

i. An application for a certificate of cancellation of a foreign business trust.

3. For filing any one of the following, the fee shall be $10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign business trust.

b. A notice of the transfer of a name reserved for use by a domestic or foreign business trust.

4. For issuing a certificate pursuant to § 13.1-1285, the fee shall be $6.

2002, c. 621; 2003, c. 373; 2004, c. 274; 2007, c. 771; 2008, c. 101; 2012, c. 130; 2013, c. 25.

§ 13.1-1205. Unlawful to sign false documents; penalty

A. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing under this chapter.

B. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

2002, c. 621.

§ 13.1-1206. Unlawful to transact or offer to transact business as a business trust; penalty

A. It shall be unlawful for any person to transact business in this Commonwealth as a business trust or to offer or advertise to transact business in this Commonwealth as a business trust unless the alleged business trust is either a domestic business trust or a foreign business trust authorized to transact business in this Commonwealth.

B. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

2002, c. 621.

§ 13.1-1207. Tax classification

For purposes of any tax imposed by Title 58.1, a business trust shall be classified as a corporation, an association, a partnership, a trust, a real estate investment trust, a regulated investment company or otherwise, as shall be determined under the United States Internal Revenue Code of 1986, as amended, or under any successor provision.

2002, c. 621.

§ 13.1-1208. Separate legal entity

A business trust established in accordance with the provisions of this chapter is a separate legal entity.

2002, c. 621.

Article 2 - FORMATION

§ 13.1-1209. Purposes

Every business trust formed under this chapter has the purpose of engaging in any lawful business, except as otherwise may be provided by the law of this Commonwealth, unless a more limited purpose is set forth in the articles of trust.

2002, c. 621.

§ 13.1-1210. Powers

Unless the articles of trust provide otherwise, every business trust has the same powers as an individual or any other entity to do all things necessary or convenient to carry out its business and affairs, including, without limitation, the power:

1. To sue and be sued, complain and defend in its name;

2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;

5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;

8. To elect and appoint trustees, officers, employees and agents of the business trust, define their duties, fix their compensation, and lend them money and credit;

9. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit and incentive plans for all or any of the current or former beneficial owners, trustees, officers, employees, and agents of the business trust or any of its subsidiaries;

10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

11. To make payments or donations or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the business trust;

12. To pay compensation, or to pay additional compensation, to any or all beneficial owners, trustees, officers and employees on account of services previously rendered to the business trust, whether or not an agreement to pay such compensation was made before such services were rendered;

13. To insure for its benefit the life of any of its beneficial owners, trustees, officers or employees, to insure the life of any beneficial owner for the purpose of acquiring at his death the interest owned by such beneficial owner and to continue such insurance after the relationship terminates;

14. To cease its activities, wind up its affairs, and proceed to cancel its existence;

15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;

16. To indemnify a trustee, officer, employee or any other person to the same extent as a corporation may indemnify any of the directors, officers, employees or agents of the corporation;

17. To transact any lawful business that a corporation, partnership, limited liability company or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, limited liability company or other business entity; and

18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the business trust is organized.

2002, c. 621; 2008, c. 101.

§ 13.1-1211. Formation

One or more persons may form a business trust by signing and filing articles of trust with the Commission. Such person or persons need not be beneficial owners of the business trust after formation has occurred.

2002, c. 621.

§ 13.1-1212. Articles of trust

A. The articles of trust shall set forth:

1. A name for the business trust that satisfies the requirements of § 13.1-1214;

2. The post office address, including the street and number, if any, of the business trust's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of this Commonwealth and is a trustee or officer of the business trust, an officer or director of a corporation that is a trustee of the business trust, a general partner of a general or limited partnership that is a trustee of the business trust, a member or manager of a limited liability company that is a trustee of the business trust, a trustee of a business trust or other trust that is a trustee of the business trust, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth; and

3. The post office address, including the street and number, if any, of the principal office of the business trust, which may be the same as the registered office, but need not be within this Commonwealth.

B. The articles of trust may set forth any other matter that under this chapter is permitted to be set forth in a governing instrument of a business trust.

C. The articles of trust need not set forth any of the powers enumerated in this chapter.

D. If the Commission finds that the articles of trust comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of trust.

2002, c. 621.

§ 13.1-1213. Articles of correction

A. A business trust may correct its articles of trust at any time to correct a name or address specified in the articles of trust.

B. For a correction to the articles of trust to be adopted, the correction shall be adopted by the sole trustee or a majority of the trustees, or in accordance with the articles of trust or the governing instrument of the business trust.

C. To correct its articles of trust, a business trust shall file with the Commission articles of correction setting forth:

1. The name of the business trust;

2. The text of each correction;

3. A statement of the nature of the error necessitating each correction; and

4. A statement of the manner in which the correction was adopted.

D. If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction.

2002, c. 621; 2003, c. 373.

§ 13.1-1214. Name

A. A business trust name may contain:

1. One or more of the following words: "company," "association," "club," "foundation," "fund," "institute," "society," "union," or "syndicate," or abbreviations of like import; and

2. The word "trust," provided that the context or remaining words in the name meet the standards prescribed in §§ 6.2-939 and 6.2-1040.

B. A business trust name shall not contain:

1. Any word, abbreviation, or combination of characters that states or implies the business trust is a corporation, a limited liability company, a limited partnership, or a registered limited liability partnership; or

2. Any word or phrase the use of which is prohibited by law for such business trust.

C. Except as authorized by subsection D, a business trust name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

2. A business trust name reserved under § 13.1-1215;

3. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

5. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830, or 13.1-831;

6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

8. A limited liability company name reserved under § 13.1-1013;

9. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic business trust may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other domestic or foreign business trust or other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying business trust.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a business trust name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

2002, c. 621; 2003, cc. 373, 592; 2005, c. 379; 2012, c. 63; 2013, c. 25.

§ 13.1-1215. Reserved name

A. A person may apply to the Commission to reserve the exclusive use of a business trust name, including a designated name for a foreign business trust. If the Commission finds that the business trust name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved business trust name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved business trust name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved business trust name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the

provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

2002, c. 621; 2006, c. 505; 2015, c. 444.

§ 13.1-1216. Amendment of articles of trust

A. Except to the extent otherwise provided in this chapter, the articles of trust, or the governing instrument of the business trust, the sole trustee or a majority of the trustees may amend the articles of trust of a business trust at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles. An amendment to the articles of trust may delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1221 is on file with the Commission.

B. A business trust amending its articles of trust shall file with the Commission articles of amendment setting forth:

1. The name of the business trust;

2. The text of each amendment adopted;

3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted in accordance with the articles of trust and the governing instrument of the business trust.

C. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

D. An amendment to the articles of the trust does not affect a cause of action existing against or in favor of the business trust, a proceeding to which the business trust is a party, or the existing rights of persons other than beneficial owners of the business trust. An amendment changing a business trust's name does not abate a proceeding brought by or against the business trust in its former name.

2002, c. 621; 2008, c. 101.

§ 13.1-1217. Restatement of articles of trust

A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing instrument of the business trust, the sole trustee or a majority of the trustees may restate the articles of trust of a business trust at any time.

B. The restatement may include one or more amendments to the articles, including an amendment to delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1221 is on file with the Commission.

C. A business trust restating its articles of trust shall file with the Commission articles of restatement setting forth:

1. The name of the business trust immediately prior to restatement;

2. Whether the restatement contains an amendment to the articles of trust;

3. The text of the restated articles of trust or amended and restated articles of trust;

4. The date of adoption of the articles of restatement; and

5. A statement that the restatement was adopted in accordance with the articles of trust and the governing instrument of the business trust.

D. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of trust or amended and restated articles of trust supersede the original articles of trust and all amendments to the original articles of trust.

E. The Commission may certify restated articles of trust or amended and restated articles of trust as the articles of trust currently in effect.

2002, c. 621; 2003, c. 373; 2008, c. 101.

§ 13.1-1218. Existence

A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing instrument of the business trust, a business trust:

1. Shall have perpetual existence; and

2. May not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of the articles of trust or the governing instrument of the business trust.

B. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, the death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner shall not result in the termination or dissolution of a business trust.

C. In the event that a business trust does not have perpetual existence, a business trust is dissolved and its affairs shall be wound up in accordance with Article 8 (§ 13.1-1234 et seq.) of this chapter at the time or on the happening of events specified in the articles of trust or the governing instrument.

2002, c. 621.

§ 13.1-1219. Governing instrument

A. A governing instrument of a business trust may:

1. Provide that a person shall become a beneficial owner and shall become bound by the governing instrument if such person, or a representative authorized by such person, orally, in writing, or by other action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest;

2. Consist of one or more agreements, instruments, or other writings and may include or incorporate a declaration of trust or bylaws containing provisions relating to the business of the business trust, the conduct of its affairs, and its rights or powers or the rights or powers of its trustees, beneficial owners, agents, or employees; and

3. Contain any provision that is not inconsistent with law or with the information contained in the articles of trust.

B. A governing instrument may contain any provision relating to the management of the business and affairs of the business trust, and the rights, duties, and obligations of the trustees, beneficial owners, and other persons, that is not contrary to any provision or requirement of this chapter or the articles of trust and without limitation:

1. May provide for classes, groups, or series of trustees or beneficial owners, or classes, groups, or series of beneficial interests, having such relative rights, powers, and duties as the governing instrument may provide; and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups or series of trustees, beneficial owners, or beneficial interests, having the relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior or subordinate to existing classes, groups, or series of trustees, beneficial owners, or beneficial interests;

2. May establish or provide for the establishment of designated series of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties with respect to specified property or obligations of the business trust or profits and losses associated with specified property or obligations and, to the extent provided in the governing instrument, any series may have a separate business purpose or investment objective;

3. May provide for the taking of any action, including the amendment of the articles of trust or governing instrument, the accomplishment of a merger or consolidation, the appointment of one or more trustees, the sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the assets of the business trust or the assets of any series, or the dissolution of the business trust; or may provide for the taking of any action to create, under the provisions of the governing instrument, a class, group, or series of beneficial interests that was not previously outstanding, in any such case without the vote or approval of any particular trustee or beneficial owner, or class, group, or series of trustees or beneficial owners;

4. May grant to or withhold from all or certain trustees or beneficial owners, or a specified class, group, or series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups, or series of trustees or beneficial owners, on any matter, such voting being on a per capita, number, financial interest, class, group, series, or any other basis;

5. May, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on, method of giving such notice, waiver of any such notice, action by consent

without a meeting, the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of the right to vote;

6. May provide for the present or future creation of more than one business trust, including the creation of a future business trust to which all or any part of the assets, liabilities, profits, or losses of any existing business trust will be transferred, and for the conversion of beneficial interests in an existing business trust or series, into beneficial interests in the separate business trust or series;

7. May provide for the appointment, election, or engagement, either as agents or independent contractors of the business trust or as delegates of the trustees, of officers, employees, managers, or other persons who may manage the business and affairs of the business trust and may have the titles and the relative rights, powers, and duties as the governing instrument shall provide; and

8. May provide for restrictions on transfer of beneficial interests to maintain the business trust's status when it is dependent on the number or identity of its beneficial owners, to preserve exemptions under federal or state securities laws or for any other purpose.

2002, c. 621.

Article 3 - REGISTERED OFFICE AND AGENT

§ 13.1-1220. Registered office and registered agent

A. Each domestic business trust and each foreign business trust registered pursuant to Article 9 (§ 13.1-1241 et seq.) of this chapter shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be either:

a. An individual who is a resident of this Commonwealth and is either (i) a trustee or officer of the business trust, (ii) an officer or director of a corporation that is a trustee of the business trust, (iii) a general partner of a general or limited partnership that is a trustee of the business trust, (iv) a member or manager of a limited liability company that is a trustee of the business trust, (v) a trustee of a business trust or other trust that is a trustee of the business trust, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company, registered limited liability partnership or business trust authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the domestic business trust or the foreign business trust at its last known address any process, notice or demand that is served on the registered agent.

2002, c. 621.

§ 13.1-1221. Change of registered office or registered agent

A. A business trust or a foreign business trust registered to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the business trust or foreign business trust;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the domestic or foreign business trust will be in compliance with the requirements of § 13.1-1220.

B. A statement of change shall forthwith be filed with the Commission by a domestic or foreign business trust whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1220.

C. A domestic or foreign business trust's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of a registered agent has been legally changed. A domestic or foreign business trust's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-1220. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the domestic or foreign business trust on or before the business day following the day on which the statement is filed.

2002, c. 621; 2003, c. 597; 2010, c. 434.

§ 13.1-1222. Resignation of registered agent

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof by certified mail to the principal office of the domestic or foreign business trust on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

2002, c. 621; 2010, c. 434.

§ 13.1-1223. Service on business trust

A. A domestic or foreign business trust's registered agent is the business trust's agent for service of process, notice, or demand required or permitted by law to be served on the business trust. The registered agent may, by instrument in writing and acknowledged before a notary public, designate a person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a domestic or foreign business trust fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the business trust upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign business trust.

2002, c. 621.

Article 4 - BENEFICIAL OWNERS

§ 13.1-1224. Beneficial owners

A.1. A contribution of a beneficial owner to the business trust may be in cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

2. A person may become a beneficial owner of a business trust and may receive a beneficial interest in a business trust without making a contribution or being obligated to make a contribution to the business trust.

B.1. Except as provided in the articles of trust or the governing instrument of the business trust, a beneficial owner is obligated to the business trust to perform any promise to contribute cash or property or to perform services, even if the beneficial owner is unable to perform because of death, disability, or any other reason.

2. Subject to the provisions of subdivision 3 of this subsection, if a beneficial owner does not make the required contribution of property or services, the beneficial owner is obligated at the option of the business trust to contribute cash equal to that portion of the agreed value, as stated in the records of the business trust, of the contribution that has not been made.

3. The option provided in subdivision 2 shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the business trust may have against the beneficial owner under the governing instrument or applicable law.

C.1. A governing instrument may provide that the interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make shall be subject to specific penalties for, or specified consequences of, the failure.

2. The penalty or consequence may take the form of:

a. Reducing or eliminating the defaulting beneficial owner's proportionate interest in the business trust or subordinating the beneficial owner's interest to that of the nondefaulting beneficial owners;

b. A forced sale of the beneficial owner's interest;

c. A forfeiture of the beneficial owner's interest;

d. A lending by other beneficial owners of the amount necessary to meet the defaulting beneficial owner's commitment;

e. A fixing of the value of the defaulting beneficial owner's interest by appraisal or by formula, and a redemption or sale of the defaulting beneficial owner's interest at that value; or

f. Any other penalty or consequence.

D. No promise of a beneficial owner to contribute to a business trust is enforceable unless set out in a writing signed by the beneficial owner.

2002, c. 621.

§ 13.1-1225. Limited liability

Except to the extent otherwise expressly provided in the governing instrument of the business trust, the beneficial owners shall be entitled to the same limitation of personal liability extended to shareholders of a Virginia corporation formed under Chapter 9 (§ 13.1-601 et seq.) of this title.

2002, c. 621.

§ 13.1-1226. Beneficial interests

A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, a beneficial owner shall have an undivided beneficial interest in the property of the business trust and shall share in the profits and losses of the business trust in the proportion (expressed as a percentage) of the entire undivided beneficial interest in the business trust owned by the beneficial owner. The governing instrument of a business trust may provide that the

business trust or the trustees, acting for and on behalf of the business trust, shall be deemed to hold beneficial ownership of any income earned on securities owned by the business trust issued by any business entities formed, organized or existing under the laws of any jurisdiction, including the laws of any foreign country.

B.1. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, a beneficial owner has no interest in specific business trust property.

2. A creditor of the beneficial owner has no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the business trust.

C. A beneficial owner's beneficial interest in the business trust is personal property notwithstanding the nature of the property of the business trust.

D. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, a beneficial owner's beneficial interest in the business trust is freely transferable.

E. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, at the time a beneficial owner becomes entitled to receive a distribution, the beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the business trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a business trust.

F. A beneficial owner of a business trust does not have a vested property right resulting from any provision of the articles of trust.

2002, c. 621.

§ 13.1-1227. Distributions to beneficial owners

A. The trustees may authorize and the business trust may make distributions to its beneficial owners, subject to restriction by the articles of trust or governing instrument and the limitation in subsection C.

B. If the trustees do not fix the record date for determining beneficial owners entitled to a distribution, other than one involving a repurchase or reacquisition of beneficial interests, it is the date the trustees authorize the distribution.

C. No distribution may be made if, after giving it effect:

1. The business trust would not be able to pay its debts as they become due in the usual course of business; or

2. The business trust's total assets would be less than the sum of its total liabilities plus (unless the articles of trust permit otherwise) the amount that would be needed, if the business trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of beneficial interests whose preferential rights are superior to those receiving the distribution.

D. The trustees may base a determination that a distribution is not prohibited under subsection C either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

E. The effect of a distribution under subsection C is measured:

1. In the case of a distribution by purchase, redemption, or other acquisition of the business trust's beneficial interests, as of the earlier of (i) the date money or other property is transferred or debt incurred by the business trust or (ii) the date the beneficial owners cease to be beneficial owners with respect to the acquired beneficial interests;

2. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;

3. In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

F. A business trust's indebtedness to a beneficial owner incurred by reason of a distribution made in accordance with this section is at parity with the business trust's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

2002, c. 621.

Article 5 - TRUSTEES

§ 13.1-1228. Trustee management; limitation on duties and liabilities of others

A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, the trustees shall choose and supervise the officers and employees of the business trust, and the business and affairs of the business trust shall be managed under the direction of the trustees.

B. Except to the extent provided in the governing instrument of a business trust, neither the power to give direction to a trustee or other persons nor the exercise by any person of a direction, including a beneficial owner, shall cause that person to have duties, including fiduciary duties, or liabilities relating to the business trust or to a beneficial owner, or cause any such person to be a trustee.

2002, c. 621.

§ 13.1-1229. Trustee standards of conduct; trustee liability; restrictions on liability limitations in governing instrument

A. A trustee shall discharge his duties as a trustee in accordance with the standards of conduct provided for directors of a Virginia corporation pursuant to §§ 13.1-690 and 13.1-691.

B. Subject to the provisions of subsection C, and except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, a trustee, when acting in such capacity, is not personally liable to any person other than the business trust or a beneficial owner for any act, omission, or obligation of the business trust or any trustee.

C. A trustee or officer of a business trust shall have no liability to the business trust or a beneficial owner for any act or omission greater than that of directors or officers of a Virginia corporation to the corporation as provided in Chapter 9 (§ 13.1-601 et seq.) of this title, including any elimination of liability provided for in the articles of trust or governing instrument.

2002, c. 621.

§ 13.1-1230. Indemnification

A. A business trust shall have the power to indemnify and hold harmless any trustee, officer, employee or agent from and against any and all claims and demands to the same extent as a director, officer, employee or agent of a Virginia corporation under Chapter 9 (§ 13.1-601 et seq.) of this title.

B. A trustee or officer of a business trust shall be entitled to mandatory indemnification to the same extent as a director or officer of a Virginia corporation under Chapter 9 (§ 13.1-601 et seq.) of this title.

C. A trustee or officer may apply for court-ordered indemnification in the same manner as a director or officer of a Virginia corporation pursuant to § 13.1-700.1.

D. A business trust may purchase and maintain insurance on behalf of an individual who is or was a trustee, officer, employee, or agent of the business trust, or who, while a trustee, officer, employee, or agent of the business trust, is or was serving at the request of the business trust as a director, officer, partner, trustee, employee, or agent of a foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the business trust would have power to indemnify him against the same liability under this section.

2002, c. 621.

Article 6 - LEGAL PROCEEDINGS

§ 13.1-1231. Capacity to sue and be sued; process; liabilities and obligations; attachment; seizure of certain assets

A. A business trust may sue and be sued in its own name, and service of process on one of the trustees shall be sufficient to constitute service on the business trust.

B. A business trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, in the performance of their respective duties under the governing instrument of the business trust, and for any damages

to persons or property resulting from the negligence of such trustees or agents acting in the performance of such respective duties.

C. The property of a business trust is subject to attachment and execution as if the business trust was a Virginia corporation organized under Chapter 9 (§ 13.1-601 et seq.) of this title.

D. Notwithstanding the provisions of this section, in the event that the governing instrument of a business trust, including a business trust that is a registered investment company under the Investment Company Act of 1940, as amended, creates one or more series as provided in subsection B of § 13.1-1219, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the business trust, or any other series, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of trust of the business trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the business trust generally or any other series, and, unless otherwise provided in the articles of trust or in the governing instrument, none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the business trust generally or any other series shall be enforceable against the assets of that series.

2002, c. 621.

Article 7 - DERIVATIVE ACTIONS

§ 13.1-1232. Right of action

A beneficial owner may bring a derivative proceeding in the right of a business trust to the same extent, and in the same manner, that a shareholder may bring a derivative proceeding under Chapter 9 (§ 13.1-601 et seq.) of this title.

2002, c. 621.

§ 13.1-1233. Payment of and security for expenses

On termination of a derivative proceeding, the court shall:

1. Order the business trust to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the business trust; or

2. Order the plaintiff or the plaintiff's attorney to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained arbitrarily, vexatiously or not in good faith.

2002, c. 621.

Article 8 - DISSOLUTION

§ 13.1-1234. Dissolution generally

A business trust organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of trust or a governing instrument;

2. Upon the unanimous written consent of the beneficial owners;

3. The entry of a decree of judicial dissolution under § 13.1-1235;

4. Automatic cancellation of its existence pursuant to § 13.1-1238.1; or

5. Involuntary cancellation of its existence pursuant to § 13.1-1238.2.

2002, c. 621; 2008, cc. 101, 588, 770; 2009, c. 167.

§ 13.1-1235. Judicial dissolution

A. On application by or for a beneficial owner, the circuit court of the city or county in which the registered office of the business trust is located may decree dissolution of a business trust if it is not reasonably practicable to carry on the business in conformity with the articles of trust and any governing instrument.

B. When the winding up of the affairs of the business trust has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the business trust's existence.

2002, c. 621; 2008, c. 101.

§ 13.1-1236. Winding up

A. The winding up of a business trust shall be completed when all debts, liabilities, and obligations of the business trust have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the business trust have been distributed to the beneficial owners.

B. Unless otherwise provided in the articles of trust or in the governing instrument, upon the dissolution of a business trust, the trustees may wind up the business trust's affairs; however, the circuit court of the city or county in which the registered office of the business trust is located, on cause shown, may wind up the business trust's affairs on application of any beneficial owner, his legal representative, or assignee.

2002, c. 621; 2008, c. 101.

§ 13.1-1237. Distribution of assets upon dissolution

Upon the winding up of a business trust, the assets of the business trust shall be distributed as follows:

1. To creditors, including beneficial owners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the business trust, other than for distributions to beneficial owners under § 13.1-1227;

2. Unless otherwise provided in the articles of trust or in the governing instrument, to the beneficial owners and former beneficial owners in satisfaction of liabilities for distributions under § 13.1-1227; and

3. Unless otherwise provided in the articles of trust or in the governing instrument, to the beneficial owners in the proportions in which the beneficial owners share in distributions.

2002, c. 621.

§ 13.1-1238. Articles of cancellation

A. When the affairs of a business trust have been wound up pursuant to § 13.1-1236, it shall file articles of cancellation with the Commission. The articles shall set forth:

1. The name of the business trust;

2. The identification number issued by the Commission to the business trust;

3. The effective date of its certificate of trust;

4. A statement that the business trust has completed the winding up of its affairs; and

5. Any other information the trustees determine to include therein, including the reason for filing the articles of cancellation.

B. If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the business trust's existence. Upon the effective date of such certificate, the existence of the business trust shall cease, except for the purpose of suits, other proceedings, and appropriate actions by trustees and beneficial owners as provided in this chapter.

2002, c. 621; 2008, c. 101; 2013, c. 25.

§ 13.1-1238.1. Automatic cancellation of business trust existence

A. Whether or not the notice described in subsection B of § 13.1-1254 is mailed, if any business trust fails to pay its annual registration fee on or before December 31 of the year assessed, its existence shall be automatically canceled as of that day.

B. If any business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the business trust of impending cancellation of its existence. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the business trust shall be automatically canceled as of that day.

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

D. No beneficial owner, trustee, or other agent of a business trust shall have any personal obligation for any liabilities of the business trust, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the business trust's existence pursuant to this section.

2008, c. 101; 2013, c. 25.

§ 13.1-1238.2. Involuntary cancellation of business trust existence

A. The existence of a business trust may be canceled involuntarily by order of the Commission when it finds that the business trust has:

1. Continued to exceed or abuse the authority conferred upon it by law;

2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Failed to file any document required by this chapter to be filed with the Commission; or

4. Been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its trustees or beneficial owners authorized to act on the behalf of a business trust constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the business trust giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

D. Any business trust convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the

judgment or record of conviction. A business trust whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. 101; 2009, c. 167.

§ 13.1-1239. Reinstatement of a business trust that has ceased to exist

A. A business trust that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § 13.1-1238.2 or (ii) entered pursuant to § 13.1-1235 and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the business trust.

B. To have its existence reinstated, a business trust shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the business trust;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the business trust ceased to exist and that would have been assessed or imposed to the date of reinstatement if the business trust's existence had not been canceled;

4. If the name of the business trust does not comply with the provisions of § 13.1-1214 at the time of reinstatement, articles of amendment to the articles of trust to change the business trust's name to a name that satisfies the provisions of § 13.1-1214, with the fee required by this chapter for the filing of articles of amendment; and

5. If the business trust's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1221.

C. If the business trust complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the business trust shall be deemed to have continued from the date of the cancellation as if the cancellation had never occurred, and any liability incurred by the business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation of the business trust's existence had never occurred.

2002, c. 621; 2004, c. 601; 2008, c. 101; 2013, c. 25.

§ 13.1-1240. Dissolution of series

A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of the business trust, a series established in accordance with § 13.1-1219 may be dissolved and its affairs wound up without causing the dissolution of the business trust or any other series. Unless otherwise provided in the articles of trust or in the governing instrument of the business trust, the dissolution, winding up, liquidation or termination of the business trust or any series thereof

shall not affect the limitation of liability with respect to a series established in accordance with §§ 13.1-1219 and 13.1-1231. A series established in accordance with § 13.1-1219 is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the business trust. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner of such series shall not result in the termination or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the business trust.

B. Upon dissolution of a series of a business trust, the persons who under the governing instrument of the business trust are responsible for winding up such series' affairs may, in the name of the business trust and for and on behalf of the business trust and such series, take all actions with respect to the series as are permitted under § 13.1-1236 and shall provide for the claims and obligations of the series and distribute the assets of the series as provided under § 13.1-1237. Any person, including any trustee, who under the governing instrument is responsible for winding up such series' affairs and who has complied with § 13.1-1237 shall not be personally liable to the claimants of the dissolved series by reason of such person's actions in winding up the series.

2002, c. 621.

Article 9 - FOREIGN BUSINESS TRUSTS

§ 13.1-1241. Authority to transact business required; governing law

A. A foreign business trust may not transact business in the Commonwealth until it obtains a certificate of registration from the Commission.

B. Subject to the Constitution of the Commonwealth:

1. The laws of the state or other jurisdiction under which a foreign business trust is formed govern its formation and internal affairs and the liability of its beneficial owners and trustees; and

2. A foreign business trust may not be denied a certificate of registration by reason of any difference between those laws and the laws of the Commonwealth.

However, a foreign business trust holding a valid certificate of registration to transact business in the Commonwealth shall have no greater rights and privileges than a domestic business trust. The certificate of registration shall not be deemed to authorize the foreign business trust to exercise any of its powers or purposes that a domestic business trust is forbidden by law to exercise in the Commonwealth.

2002, c. 621; 2008, c. 101.

§ 13.1-1242. Application for certificate of registration

A. A foreign business trust may apply to the Commission for a certificate of registration to transact business in the Commonwealth. The application shall be made on a form prescribed and furnished by the Commission. The application shall set forth:

1. The name of the foreign business trust and, if the business trust is prevented by § 13.1-1244 from using its own name in the Commonwealth, a designated name that satisfies the requirements of § 13.1-1244;

2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation, and if the business trust was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The address of the proposed registered office of the foreign business trust in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of the Commonwealth and is either (1) a trustee or officer of the business trust, (2) an officer or director of a corporation that is a trustee of the business trust, (3) a general partner of a general or limited partnership that is a trustee of the business trust, (4) a member or manager of a limited liability company that is a trustee of the business trust, (5) a trustee of a business trust or other trust that is a trustee of the business trust, or (6) a member of the Virginia State Bar, or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign business trust for service of process if the foreign business trust fails to maintain a registered agent in the Commonwealth as required by § 13.1-1220, the registered agent's authority has been revoked, the registered agent has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The post office address, including the street and number, if any, of the foreign business trust's principal office; and

6. A statement evidencing that the foreign business trust is a "foreign business trust" as defined in § 13.1-1201.

B. The foreign business trust shall deliver with the completed application a copy of the articles of trust or other constituent documents and all amendments and corrections thereto filed in the foreign business trust's state or other jurisdiction of formation, duly authenticated by the Secretary

of State or other official having custody of the business trust records in the state or other jurisdiction under whose laws it is formed.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth.

2002, c. 621; 2004, c. 274; 2008, c. 101.

§ 13.1-1243. Repealed

Repealed by Acts 2008, c. 101, cl. 2, effective April 1, 2009.

§ 13.1-1244. Name

A. No certificate of registration shall be issued to a foreign business trust unless the name of such foreign business trust satisfies the requirements of § 13.1-1214.

B. If the name of a foreign business trust does not satisfy the requirements of § 13.1-1214, to obtain or maintain a certificate of registration to transact business in the Commonwealth, the foreign business trust may use a designated name that is available, and which satisfies the requirements of § 13.1-1214, if it informs the Commission of the designated name.

2002, c. 621; 2012, c. 63.

§ 13.1-1245. Amendments; amended applications for registration

A. Whenever the articles of trust or other constituent document of a foreign business trust that is registered to transact business in the Commonwealth is amended or corrected, the foreign business trust shall promptly file with the Commission a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the business trust records in the state or other jurisdiction of its formation.

B. If any statement in the application for registration of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file with the Commission an amended application for registration amending such statement or information. The amended application for registration shall be made on a form prescribed and furnished by the Commission.

2002, c. 621; 2008, c. 101.

§ 13.1-1246. Voluntary cancellation of certificate of registration

A. A foreign business trust registered to transact business in the Commonwealth may apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign business trust and the name of the state or other jurisdiction under whose law it is or was formed, and the identification number issued by the Commission to the business trust;

2. If applicable, that the foreign business trust was a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it was organized and that it was not the surviving entity of the merger;

3. That the foreign business trust is not transacting business in the Commonwealth and that it surrenders its registration to transact business in the Commonwealth;

4. That the foreign business trust revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the business trust.

B. If the Commission finds that the application complies with the requirements of law and all required fees have been paid, it shall issue a certificate of cancellation canceling the certificate of registration.

C. Before any foreign business trust registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign business trust shall not take away or impair any remedy available against such business trust for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign business trust may be defended by such business trust in its name. The trustees and beneficial owners shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign business trust that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its formation.

D. Service of process on the clerk of the Commission is service of process on a foreign business trust whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign business trust may be made in any other manner permitted by law.

2002, c. 621; 2008, cc. 588, 770; 2009, c. 167; 2012, c. 130; 2013, c. 25.

§ 13.1-1246.1. Automatic cancellation of registration

A. Whether or not the notice described in subsection B of § 13.1-1254 is mailed, if any foreign business trust fails to pay its annual registration fee on or before December 31 of the year assessed, such foreign business trust shall automatically cease to be authorized to transact busi-

ness in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

B. If any foreign business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign business trust of the impending cancellation of its certificate of registration. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the business trust shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

C. The automatic cancellation of a foreign business trust's certificate of registration constitutes the appointment of the clerk of the Commission as the foreign business trust's agent for service of process in any proceeding based on a cause of action arising during the time the foreign business trust was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign business trust and shall be made on the clerk in accordance with § 12.1-19.1.

D. Cancellation of a foreign business trust's certificate of registration does not terminate the authority of the registered agent of the foreign business trust.

2008, c. 101; 2013, c. 25.

§ 13.1-1246.2. Involuntary cancellation of registration

A. The certificate of registration to transact business in the Commonwealth of any foreign business trust may be canceled involuntarily by order of the Commission when it finds that the foreign business trust:

1. Has continued to exceed or abuse the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or other jurisdiction of its formation; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its trustees or beneficial owners authorized to act on the behalf of a foreign business trust constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the foreign business trust giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign business trust to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign business trust's certificate of registration appoints the clerk of the Commission the foreign business trust's agent for service of process in any proceeding based on a cause of action arising during the time the foreign business trust was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign business trust and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign business trust's certificate of registration does not terminate the authority of the registered agent of the foreign business trust.

F. Any foreign business trust convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. 101; 2009, c. 167.

§ 13.1-1246.3. Reinstatement of a certificate of registration that has been canceled

A. A foreign business trust whose certificate of registration to transact business in the Commonwealth has been canceled may be relieved of the cancellation and have its certificate of registration reinstated by the Commission within five years of the date of cancellation unless the certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1 of § 13.1-1246.2.

B. To have its certificate of registration reinstated, a foreign business trust shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the business trust;

2. A reinstatement fee of $100;

3. All annual registration fees and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the business trust had not had its certificate of registration canceled;

4. A duly authenticated copy of any amendments or corrections made to the articles of trust or other constituent documents of the foreign business trust and any mergers entered into by the foreign business trust from the date of cancellation of its certificate of registration to the date of its application for reinstatement, with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign business trust does not comply with the provisions of § 13.1-1214 at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-1214, along with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign business trust's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1221.

C. If the foreign business trust complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign business trust's certificate of registration to transact business in the Commonwealth.

2008, c. 101; 2013, c. 25.

§ 13.1-1247. Transaction of business without registration; civil penalty

A. A foreign business trust transacting business in the Commonwealth shall not maintain any action, suit, or proceeding in any court of the Commonwealth until it has registered in the Commonwealth.

B. The successor to a foreign business trust that transacted business in the Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign business trust or its successor has registered in the Commonwealth.

C. The failure of a foreign business trust to register in the Commonwealth shall not impair the validity of any contract or act of the foreign business trust or prevent the foreign business trust from defending any action, suit, or proceeding in any court of the Commonwealth.

D. If a foreign business trust transacts business in the Commonwealth without a certificate of registration, each trustee, officer or employee of the business trust who does any such business in the Commonwealth knowing that a certificate of authority is required and has not been obtained shall be liable for a civil penalty of not less than $500 and not more than $5,000, which may be imposed by the Commission or by any court in the Commonwealth before which an action against the business trust may lie, after the business trust and the individual have been given notice and an opportunity to be heard. Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.

E. Suits, actions, and proceedings may be initiated against a foreign business trust that transacts business in the Commonwealth without a certificate of registration by serving process on any trustee, officer, or agent of the business trust doing such business, or, if none can be found, on the clerk of the Commission or on the business trust in any other manner permitted by law. If any foreign business trust transacts business in the Commonwealth without a certificate of registration, it shall by transacting such business be deemed to have thereby appointed the clerk of the

Commission its agent for service of process. Service upon the clerk shall be made in accordance with § 12.1-19.1.

2002, c. 621; 2008, c. 523; 2013, c. 25.

§ 13.1-1248. Actions by Attorney General

The Attorney General may bring an action to restrain a foreign business trust from transacting business in this Commonwealth in violation of this article.

2002, c. 621.

§ 13.1-1249. Transactions not constituting doing business

A. The following activities of a foreign business trust, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of its beneficial owners or carrying on any other activities concerning its internal affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign business trust's securities or maintaining trustees or depositaries with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films that are sent outside of the Commonwealth for processing, editing, marketing and distribution; or

12. Serving, without more, as a general partner of, or as a partner in a partnership that is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

C. The list of activities in subsection A is not exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

2002, c. 621; 2013, c. 25.

§ 13.1-1250. Merger of foreign business trust registered to transact business in Commonwealth

A. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is organized, and that business trust is the surviving entity of the merger, it shall, within 30 days after the merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the secretary of state or other official having custody of business trust records in the state or other jurisdiction under whose laws the merger was effected. However, the filing shall not be required when a foreign business trust merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign business trust's articles of trust or other constituent documents are not amended by the merger; and the articles or statement of merger filed on behalf of the domestic corporation, limited liability company, limited partnership, business trust, or partnership pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign business trust is formed and that the foreign business trust has complied with that law in effecting the merger.

B. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is organized, and that business trust is not the surviving entity of the merger, the surviving entity shall, if not continuing to transact business in this Commonwealth, within 30 days after such merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the secretary of state or other official having custody of business trust records in the state or other jurisdiction under whose laws the merger was effected, and comply on behalf of the predecessor business trust with the provisions of § 13.1-1246. If the surviving entity is to continue to transact business in this Commonwealth and has not received a certificate of authority to transact business in this Commonwealth or registered as a foreign business entity it shall, within 30 days after the merger becomes effective, deliver to the Commission an application (i) if a foreign business trust, for registration as a foreign business trust, (ii) if a foreign limited liability company, for registration as a foreign limited liability company, (iii) if a foreign limited partnership, for registration as a foreign limited partnership or (iv) if a foreign corporation, for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its articles of trust, articles of organization, certificate of limited partnership or articles of incorporation and all amendments thereto, duly authenticated by the secretary of state or other official having custody of the business trust, limited liability

company, limited partnership or corporate records in the state or other jurisdiction under whose laws it is organized, formed or incorporated.

C. Upon the merger of a foreign business trust with one or more foreign business trusts, limited liability companies, limited partnerships or corporations, all property in this Commonwealth owned by any of the business trusts, limited liability companies, limited partnerships or corporations shall pass to the surviving business trust, limited liability company, limited partnership or corporation except as otherwise provided by the laws of the jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Commission.

2002, c. 621; 2008, c. 101.

§ 13.1-1250.1. Entity conversion of foreign business trust registered to transact business in Commonwealth

A. Whenever a foreign business trust that is registered to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of business trust records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign corporation, limited liability company, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor business trust with the provisions of § 13.1-1246; or

2. If the surviving or resulting entity is a foreign corporation, limited liability company, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of authority or registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign business trust that is registered to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign business trust shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. 274.

Article 10 - ANNUAL REGISTRATION FEES

§ 13.1-1251. Annual registration fees to be assessed and collected by Commission; application of payment

The Commission shall assess and collect the annual registration fees imposed by this chapter. When the Commission receives payment of a registration fee assessed against a domestic or foreign business trust, such payment shall be applied against any unpaid registration fees previously assessed against such business trust, including any penalties incurred thereon, beginning with the assessment that has remained unpaid for the longest period of time.

2002, c. 621.

§ 13.1-1252. Assessment of annual registration fees; annual registration fee to be paid by domestic and foreign business trusts

A. Each domestic business trust and each foreign business trust registered to transact business in the Commonwealth, shall pay into the state treasury on or before October 1 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth an annual registration fee of $50, provided that the initial annual registration fee to be paid by a domestic business trust created by entity conversion shall be due in the year after the calendar year in which it converted.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the business trust for the privilege of carrying on its business in the Commonwealth or upon its franchise, property, or receipts.

B. Each year, the Commission shall ascertain from its records each domestic business trust and each foreign business trust registered to transact business in the Commonwealth as of July 1 and, except as provided in subsection A, shall assess against each such business trust the annual registration fee herein imposed.

C. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign business trust.

D. Any domestic business trust that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of trust surrender, or certificate of entity conversion, or any foreign business trust that has obtained a certificate of cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign business trust that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date, shall not be required to pay the annual registration fee for that year. Any foreign business trust that has converted, effective on or before its annual registration fee due date pursuant to subsection A in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the annual registration fee for that

year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

E. Registration fee assessments that have been paid shall not be refunded.

F. The fees paid into the state treasury under this section and the fees collected under § 13.1-1204 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

2002, c. 621; 2007, c. 810; 2013, c. 25.

§ 13.1-1253. Repealed

Repealed by Acts 2013, c. 25, cl. 2.

§ 13.1-1254. Penalty for failure to timely pay annual registration fees or file statement of change

A. Any domestic or any foreign business trust that fails to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1252 shall incur a penalty of $25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalty or liability imposed by law.

B. The Commission shall mail to each domestic and foreign business trust that fails to pay its annual registration fee within the time prescribed in § 13.1-1252 a notice of assessment of the penalty imposed herein and of the impending cancellation of its existence or certificate of registration, as the case may be.

2002, c. 621; 2003, c. 373; 2004, cc. 274, 601; 2008, c. 101.

§ 13.1-1255. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds

A. The Commission shall not file or issue with respect to any domestic or foreign business trust any document or certificate specified in this chapter, except a statement of change pursuant to § 13.1-1221 and a statement of resignation pursuant to § 13.1-1222, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such business trust. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign business trust that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the business trust's annual registration fee payment in any year, provided that the Commission shall

not issue a certificate of domestication with respect to a foreign business trust until the annual registration fee has been paid by or on behalf of that business trust.

B. The Commission shall have the authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

2002, c. 621; 2004, c. 316; 2006, c. 659; 2007, c. 810.

§ 13.1-1256. Collection by suit and of unpaid bills

The provisions of §§ 13.1-775.1 and 58.1-2814, so far as they are applicable, shall apply to the annual registration fees and penalties imposed by this chapter.

2002, c. 621.

Article 11 - MERGER

§ 13.1-1257. Authorization for merger

Unless the governing instrument provides otherwise, a domestic business trust may merge with or into one or more business trusts or other business entities formed or organized or existing under the laws of Virginia or any other state or the United States or any foreign country or other foreign jurisdiction.

2002, c. 621.

§ 13.1-1258. Approval

A. Unless otherwise provided in the articles of trust or the governing instrument of a business trust, a merger shall be approved by each business trust that is to merge by the affirmative vote of the trustees and the holders of two-thirds of the outstanding beneficial interests of such business trust.

B. A merger need be approved only by the trustees of a successor business trust if:

1. The merger does not reclassify or change its outstanding beneficial interests or otherwise amend its articles of trust or governing instrument; and

2. The beneficial interests to be issued or delivered in the merger are not more than twenty percent of the beneficial interests of the same class or series outstanding immediately before the merger becomes effective.

C. The merger shall be approved by any other business entity party to the merger in the manner required by the articles of incorporation or charter, declaration of trust, partnership agreement, or other organizational document of the other business entity and the laws of the jurisdiction where the other business entity is organized.

2002, c. 621.

§ 13.1-1259. Exchange of securities; termination or amendment of merger

In connection with a merger, rights or securities of, or interests in, a business trust or other business entity that is a constituent party to the merger may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the successor business trust or any other business entity, whether or not a party to the transaction. Notwithstanding prior approval, an agreement of merger may be terminated or amended under a provision for the termination or amendment contained in the agreement of merger.

2002, c. 621.

§ 13.1-1260. Repealed

Repealed by Acts 2003, c. 373, effective October 1, 2003.

§ 13.1-1261. Articles of merger

A. After a plan of merger is approved by each party to the merger, the surviving business trust or other surviving business entity shall file with the Commission articles of merger executed by each party to the merger setting forth:

1. The name and jurisdiction of formation or organization of each of the business trusts or other business entities planning to merge and, as to each foreign entity, the date of its formation, and whether it is authorized to do business in this Commonwealth;

2. That an agreement of merger has been approved and executed by each of the business trusts or other business entities planning to merge in the manner required by its governing instrument, articles of trust, articles of incorporation or charter, articles of organization or formation, certificate of limited partnership or other constituent documents and by the laws of the jurisdiction where it is organized;

3. The name of the successor business trust or other business entity;

4. Any amendment to the articles of incorporation or charter, certificate of limited partnership, articles of organization or formation of a limited liability company, articles of trust or governing instrument of the successor to be effected as part of the merger;

5. The manner and basis of converting or exchanging issued shares of stock of the merging corporations, outstanding partnership interests of the merging general partnerships, outstanding partnership interests of the merging limited partnerships, outstanding membership interests of the merging limited liability companies, or shares of beneficial interest of the merging business trusts into different shares of stock of a corporation, partnership interests of a general partnership, partnership interests of a limited partnership, membership interests of a limited liability company, shares of beneficial interest of a business trust, or other consideration, and the treatment of any issued shares of stock of the merging corporations, partnership interests of the merging general partnerships, partnership interests of the merging limited partnerships, membership interests of the merging limited liability companies, or shares of beneficial interest of the merging business trusts not to be converted or exchanged;

6. That the executed agreement of merger is on file at the principal place of business of the successor business trust or other business entity, and shall state the address of that principal place of business; and

7. That a copy of the agreement of merger will be furnished by the successor business trust or other business entity, on request and without cost, to any beneficial owner of any business trust or any person holding an interest in any other business entity that is a party to the merger.

B. If a foreign limited liability company, partnership, limited partnership, business trust, or corporation is a party to the merger, the articles of merger shall contain a statement that the merger is permitted by the state or other jurisdiction under whose law the limited liability company is organized, the partnership, limited partnership, or business trust is formed or the corporation is incorporated and that the foreign limited liability company, partnership, limited partnership, business trust, or corporation has complied with that law in effecting the merger.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective as provided in subsection D of § 13.1-1203.

D. A certificate of merger shall act as a certificate of cancellation as described in § 13.1-1238 for a domestic business trust that is not the surviving party to the merger, and such business trust's existence shall be canceled upon the effective date of the certificate of merger.

2002, c. 621; 2003, c. 373; 2008, c. 101.

§ 13.1-1262. Governing instrument

A. Notwithstanding anything to the contrary contained in the governing instrument of a business trust, a governing instrument of a business trust containing a specific reference to this section may provide that an agreement of merger approved in accordance with this article may:

1. Effect any amendment to the governing instrument of the business trust; or

2. Effect the adoption of a new governing instrument of the business trust if it is the successor trust in the merger.

B.1. Any amendment to the governing instrument of a business trust or adoption of a new governing instrument of the business trust made under this section shall be effective at the effective time or date of the merger.

2. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in the governing instrument of a business trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent business trust to the merger shall be the governing instrument of the successor trust.

2002, c. 621.

§ 13.1-1263. Effect of merger

When a merger takes effect:

1. The separate existence of each business trust, corporation, partnership, limited partnership, or limited liability company party to the merger, except the successor, ceases.

2. The shares of beneficial interests of each business trust party to the merger that are to be converted or exchanged under the terms of the merger cease to exist, subject to the rights of an objecting beneficial owner under this article.

3. In addition to any other purposes and powers set forth in the articles of merger, if the articles of merger provide, the successor has the purposes and powers of each party to the merger.

4. The title to all real estate and other property of each party to the merger is vested in the successor business trust without further reservation or impairment.

5. The successor has all the liabilities of each non-surviving party to the merger.

6. A governing instrument or an agreement of merger may provide that contractual dissenter's rights with respect to a beneficial interest in a business trust shall be available for any class or group of beneficial owners or beneficial interests in connection with any amendment of a governing instrument, any merger in which the business trust is a constituent party to the merger or sale of all or substantially all of the business trust's assets.

2002, c. 621.

Article 12 - DOMESTICATION AND CONVERSION

§ 13.1-1264. Definitions

As used in this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic or foreign business trust, corporation, limited liability company, limited partnership, partnership, or other entity that adopts a plan of domestication or plan of entity conversion pursuant to this article.

"Corporation" and "domestic corporation" have the same meaning specified in § 13.1-603.

"Domestic entity" means a domestic corporation, limited liability company, limited partnership, partnership, or other entity.

"Foreign corporation" has the same meaning specified in § 13.1-603.

"Foreign entity" means a foreign business trust, corporation, limited liability company, limited partnership, partnership, or other entity.

"Foreign limited liability company" has the same meaning specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning specified in § 50-73.1.

"Foreign partnership" has the same meaning specified in § 13.1-1002.

"Limited liability company" and "domestic limited liability company" have the same meaning specified in § 13.1-1002.

"Limited partnership" and "domestic limited partnership" have the same meaning specified in § 50-73.1.

"Member" has the same meaning specified in § 13.1-1002.

"Membership interest" or "interest" has the same meaning specified in § 13.1-1002.

"Other entity" means a domestic or foreign real estate investment trust or common law trust.

"Partnership" and "domestic partnership" mean an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Resulting entity" means the domestic limited liability company or business trust that is in existence upon consummation of an entity conversion pursuant to this article.

"Surviving entity" means the domestic business trust that is in existence upon consummation of a domestication pursuant to this article.

2002, c. 621; 2016, c. 288.

§ 13.1-1265. Domestication

A. A foreign business trust, corporation, limited liability company, limited partnership, partnership or other entity may become a domestic business trust if the laws of the jurisdiction in which the foreign entity is formed authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic business trust not required by law to be a domestic business trust may become a foreign business trust if the jurisdiction in which the business trust intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the business trust domesticates shall govern the effect of domesticating in that jurisdiction.

2002, c. 621.

§ 13.1-1266. Plan of domestication

A. The plan of domestication shall set forth:

1. The name of the state or other jurisdiction under whose laws the domestic business trust or foreign entity is formed, organized, or incorporated;

2. A statement of the jurisdiction in which the domestic business trust or foreign entity is to be domesticated;

3. The terms and conditions of the domestication, provided that such terms and conditions may not alter the ownership proportion or the relative rights, preferences and limitations of the interests of the beneficial owners except to the extent required to conform to the requirements of this chapter; and

4. For a foreign entity that is to become a domestic business trust, as a referenced attachment, the amended and restated articles of trust that comply with § 13.1-1212 as they will be in effect upon consummation of the domestication.

B. The plan of domestication may include any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the management of the converting entity may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the beneficial owners of the foreign entity, if required, shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the interests of the beneficial owners.

2002, c. 621; 2012, c. 130.

§ 13.1-1267. Action on plan of domestication by a domestic business trust

A. The plan of domestication shall be approved by the trustees of the domestic business trust in the manner provided in the business trust's governing instrument or articles of trust for amendments or, if no such provision is made in a governing instrument or articles of trust, by the sole trustee or a majority of the trustees of the business trust.

B. The business trust shall notify each trustee, whether or not entitled to vote, and each member of a voting group of the proposed trustees' meeting at which the plan of domestication is to be submitted for approval. The notice, which shall be given no less than twenty-five nor more than sixty days before the meeting date, shall state that a purpose of the meeting is to consider the plan of domestication and shall contain or be accompanied by a copy of the plan.

2002, c. 621.

§ 13.1-1268. Articles of domestication

A. After the domestication of a foreign entity is approved in the manner required by the laws of the jurisdiction in which the foreign entity is formed, the foreign entity shall file with the Commission articles of domestication setting forth:

1. The name of the foreign entity immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the foreign entity desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-1214;

2. The plan of domestication;

3. The original jurisdiction, entity type and date of formation of the foreign entity, and each subsequent jurisdiction, entity type and date the foreign entity was domesticated in each such jurisdiction or converted to a new entity type, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the business trust is formed and that the business trust has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § 13.1-1203.

D. A foreign entity's existence as a domestic business trust shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign business trust have been complied with and that the business trust has been formed under this chapter.

E. If the foreign business trust is authorized to transact business in the Commonwealth under Article 9 (§ 13.1-1241 et seq.), its certificate of authority shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

2002, c. 621; 2012, c. 130.

§ 13.1-1269. Surrender of articles of trust upon domestication

A. Whenever a domestic business trust has adopted and approved, in the manner required by this article, a plan of domestication providing for the business trust to be domesticated under the laws of another jurisdiction, the business trust shall file with the Commission articles of trust surrender setting forth:

1. The name of the business trust;

2. The business trust's new jurisdiction of formation;

3. The business trust's new entity type, if any;

4. The plan of domestication;

5. A statement that the articles of trust surrender are being filed in connection with the domestication of the business trust as a foreign entity to be formed under the laws of another jurisdiction and that the business trust is surrendering its charter under the laws of this Commonwealth;

6. A statement that the plan was adopted by the business trust in accordance with § 13.1-1267;

7. A statement that the domestic business trust revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of pro-

cess in any proceeding based on a cause of action arising during the time it was formed in this Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 7; and

9. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the business trust.

B. If the Commission finds that the articles of trust surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of trust surrender.

C. The business trust shall automatically cease to be a domestic business trust when the certificate of trust surrender becomes effective.

D. If the former domestic business trust intends to continue to transact business in the Commonwealth, then, within thirty days after the effective date of the certificate of trust surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to the applicable provisions of the Code of Virginia for the resulting entity type of the former domestic business trust.

2002, c. 621.

§ 13.1-1270. Effect of domestication

A. When a foreign business trust's certificate of domestication in this Commonwealth becomes effective, with respect to that business trust:

1. The title to all real estate and other property remains in the business trust without reversion or impairment;

2. The liabilities remain the liabilities of the business trust;

3. A proceeding pending may be continued by or against the business trust as if the domestication did not occur;

4. The articles of trust attached to the articles of domestication constitute the articles of trust of the business trust; and

5. The business trust is deemed to:

a. Be formed under the laws of this Commonwealth for all purposes;

b. Be the same business trust as the business trust that existed under the laws of the jurisdiction or jurisdictions in which it was originally formed or formerly domiciled; and

c. Have been formed on the date it was originally formed or organized.

B. Any trustee of a foreign business trust that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the business trust is not released from those liabilities or obligations by reason of the domestication.

2002, c. 621.

§ 13.1-1271. Abandonment of domestication

A. Unless a plan of domestication of a domestic business trust prohibits abandonment of the domestication without approval of one or more voting groups, after the domestication has been authorized, and at any time before the certificate of domestication filed in the other jurisdiction has become effective, the domestication may be abandoned without further action by any voting group in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the trustees.

B. If a domestication is abandoned under subsection A after articles of trust surrender have been filed with the Commission but before the certificate of trust surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of trust surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign entity into a domestic business trust is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in this Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

2002, c. 621.

§ 13.1-1272. Entity conversion

A. A domestic business trust may become a domestic limited liability company pursuant to a plan of entity conversion that is approved by the domestic business trust in accordance with the provisions of this article.

B. A domestic limited liability company may become a domestic business trust pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of Article 15 (§ 13.1-1081 et seq.) of Chapter 12.

C. Unless otherwise provided for in Chapter 2.2 (§ 50-73.79 et seq.) of Title 50, a domestic partnership that has filed either a statement of partnership authority or a statement of registration as a registered limited liability partnership with the Commission that is not canceled may become a domestic business trust pursuant to a plan of entity conversion that is approved by the domestic partnership in accordance with the provisions of this article.

D. Unless otherwise provided for in Chapter 2.1 (§ 50-73.1 et seq.) of Title 50, a domestic limited partnership that has filed a certificate of limited partnership with the Commission that is not canceled may become a domestic business trust pursuant to a plan of entity conversion that is approved by the domestic limited partnership in accordance with the provisions of this article.

E. An other entity may become a domestic business trust pursuant to a plan of entity conversion that is approved by the other entity in accordance with the provisions of its governing instrument for amendments to the governing instrument.

2002, c. 621; 2016, c. 288.

§ 13.1-1273. Plan of entity conversion

A. In the case of a domestic business trust that is a converting entity:

1. The business trust shall approve a plan of entity conversion setting forth:

a. A statement of the business trust's intention to convert to a domestic limited liability company;

b. The terms and conditions of the conversion, including the manner and basis of converting the beneficial interests of the business trust into membership interests of the limited liability company, preserving the ownership proportion and relative rights, preferences, and limitations of each beneficial interest;

c. As an attachment to the plan, the full text of the articles of organization of the converting entity as they will be in effect upon consummation of the conversion; and

d. Any other provision relating to the conversion that may be desired.

2. The plan of entity conversion may also include a provision that the plan may be amended before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the trustees shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the beneficial interests of the converting entity, unless the amendment has been approved by the trustees in the manner set in § 13.1-1274.

B. In the case of a domestic partnership or limited partnership that is a converting entity:

1. The partnership or limited partnership shall approve a plan of entity conversion setting forth:

a. A statement of the partnership's or limited partnership's intention to convert to a domestic business trust;

b. The terms and conditions of the conversion, including the manner and basis of converting the partnership interests of the limited partnership or partnership into beneficial interests of the business trust, preserving the ownership proportion and relative rights, preferences, and limitations of each partnership interest;

c. As an attachment to the plan, the full text of the articles of trust of the resulting entity as they will be in effect upon consummation of the conversion; and

d. Any other provision relating to the conversion that may be desired.

2. The plan of entity conversion may also include a provision that the plan may be amended before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan:

a. To the partners of a partnership shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the partnership interests of the partnership, unless the amendment has been approved by the partners in the manner set forth in § 13.1-1274; and

b. To the partners of a limited partnership shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the partnership interests of the limited partnership, unless the amendment has been approved by the partners in the manner set forth in § 13.1-1274.

C. In the case of an other entity that is a converting entity:

1. The other entity shall approve a plan of entity conversion setting forth:

a. A statement of the other entity's intention to convert to a domestic business trust;

b. The terms and conditions of the conversion, including the manner and basis of converting the interests of the other entity into beneficial interests of the business trust, preserving the ownership proportion and relative rights, preferences, and limitations of each interest of the other entity;

c. As an attachment to the plan, the full text of the articles of trust of the resulting entity as they will be in effect upon consummation of the conversion; and

d. Any other provision relating to the conversion that may be desired.

2. The plan of entity conversion may also include a provision that the plan may be amended before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the persons who are authorized to approve the plan of entity conversion on behalf of the other entity shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the interests of the other entity, unless the amendment has been approved by the persons who are authorized to approve the plan in the manner set forth in § 13.1-1274.

2002, c. 621; 2016, c. 288.

§ 13.1-1274. Action on plan of entity conversion

A. In the case of a domestic business trust that is a converting entity, unless the articles of trust or governing instrument of the business trust provides otherwise, the plan of entity conversion shall be approved by the trustees of the business trust in the manner provided in a written governing instrument for amendments to the governing instrument by the trustees or, if no provision is made in the governing instrument, by the sole trustee or a majority of the trustees.

B. In the case of a partnership that is a converting entity, the plan of entity conversion shall be approved by the partners of the partnership in the manner provided in a written partnership agreement for amendments to the partnership agreement by the partners or, if no provision is made in the partnership agreement, by all the partners.

C. In the case of a limited partnership that is a converting entity, the plan of entity conversion shall be approved by the partners of the limited partnership in the manner provided in a written partnership agreement for amendments to the partnership agreement by the partners or, if no provision is made in the partnership agreement, by all the partners.

D. In the case of an other entity that is a converting entity, the plan of entity conversion shall be approved by the persons who have authority to approve the entity conversion in the manner provided in a written governing instrument for amendments to the governing instrument by those persons or, if no provision is made in the governing instrument, by all the persons who have authority to approve the entity conversion on behalf of the other entity.

2002, c. 621; 2016, c. 288.

§ 13.1-1275. Articles of entity conversion

A. After the conversion of a domestic business trust into a domestic limited liability company has been approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the domestic business trust immediately before the filing of the articles of entity conversion and the name of the converting entity upon its conversion to a domestic limited liability company, which shall satisfy the requirements of § 13.1-1012;

2. The date on which the converting entity was originally organized, formed, or incorporated, and its original name, entity type, and jurisdiction of organization, formation, or incorporation, and, for each subsequent change of entity type or jurisdiction of organization, formation, or incorporation made before the filing of the articles of entity conversion, the effective date of the change and the converting entity's name, entity type, and jurisdiction of organization, formation, or incorporation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement that the plan of entity conversion was adopted by the business trust in accordance with § 13.1-1274.

B. After the conversion of a domestic partnership or limited partnership into a domestic business trust has been approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the domestic partnership or limited partnership immediately before the filing of the articles of entity conversion and the name of the converting entity upon its conversion to a domestic business trust, which shall satisfy the requirements of this chapter;

2. The date on which the converting entity was originally organized, formed, or incorporated, and its original name, entity type, and jurisdiction of organization, formation, or incorporation, and, for each subsequent change of entity type or jurisdiction of organization, formation, or incorporation made before the filing of the articles of entity conversion, the effective date of the change and the converting entity's name, entity type, and jurisdiction of organization, formation, or incorporation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of trust of the resulting entity that comply with the requirements of this chapter as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement that the plan of entity conversion was adopted by the partnership or limited partnership in accordance with § 13.1-1274.

C. After the conversion of an other entity into a domestic business trust has been approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the other entity immediately before the filing of the articles of entity conversion and the name of the converting entity upon its conversion to a domestic business trust, which shall satisfy the requirements of this chapter;

2. The date on which the converting entity was originally organized, formed, or incorporated, and its original name, entity type, and jurisdiction of organization, formation, or incorporation, and, for each subsequent change of entity type or jurisdiction of organization, formation, or incorporation made before the filing of the articles of entity conversion, the effective date of the change and the converting entity's name, entity type, and jurisdiction of organization, formation, or incorporation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of trust of the resulting entity that comply with the requirements of this chapter as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement that the plan of entity conversion was adopted by the other entity in accordance with § 13.1-1274.

D. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2002, c. 621; 2016, c. 288.

§ 13.1-1276. Effect of entity conversion

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities of the converting entity remain the liabilities of the resulting entity; and

3. A proceeding pending may be continued by or against the resulting entity as if the conversion did not occur.

B. When the resulting entity is a domestic limited liability company:

1. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

2. The beneficial interests of the converting entity are reclassified into membership interests of the resulting entity in accordance with the plan of entity conversion; and the holders of the beneficial interests of the converting entity are entitled only to the rights provided in the plan of entity conversion;

3. The resulting entity is deemed to:

a. Be a domestic limited liability company for all purposes;

b. Be the same limited liability company without interruption as the converting entity that existed before the conversion; and

c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed;

4. The converting entity shall cease to be a business trust when the certificate of entity conversion becomes effective; and

5. Any trustee of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

C. When the converting entity is a partnership or a limited partnership:

1. The articles of trust attached to the articles of entity conversion constitute the articles of trust of the resulting entity;

2. The partnership interests of the converting entity are reclassified into beneficial interests of the resulting entity in accordance with the plan of entity conversion; and the partners of the converting entity are entitled only to the rights provided in the plan of entity conversion;

3. The resulting entity is deemed to:

a. Be a domestic business trust for all purposes;

b. Be the same business trust without interruption as the converting entity that existed before the conversion; and

c. Have been organized on the date that the converting entity was originally formed, organized, or incorporated;

4. The converting entity shall cease to be a partnership or limited partnership when the certificate of entity conversion becomes effective;

5. If the converting entity is a partnership, a statement of partnership authority filed by the partnership that has not been canceled shall be deemed canceled when the certificate of entity conversion becomes effective;

6. If the converting entity is a limited partnership, its certificate of limited partnership shall be deemed canceled when the certificate of entity conversion becomes effective;

7. If the partnership or limited partnership is registered as a registered limited liability partnership, that status shall be deemed canceled when the certificate of entity conversion becomes effective; and

8. Any partner of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

D. When the converting entity is an other entity:

1. The articles of trust attached to the articles of entity conversion constitute the articles of trust of the resulting entity;

2. The shares or interests of the converting entity are reclassified into beneficial interests of the resulting entity in accordance with the plan of entity conversion; and the persons having an interest in the converting entity are entitled only to the rights provided in the plan of entity conversion;

3. The surviving entity is deemed to:

a. Be a business trust for all purposes;

b. Be the same business trust without interruption as the converting entity that existed before the conversion; and

c. Have been formed on the date that the converting entity was originally incorporated, organized, or formed; and

4. The converting entity shall cease to be an other entity when the certificate of entity conversion becomes effective.

2002, c. 621; 2005, c. 765; 2016, c. 288.

§ 13.1-1277. Abandonment of entity conversion

A. Unless otherwise provided in a plan of entity conversion of a domestic business trust to become a domestic limited liability company, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the business trust without action by the trustees in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan, by a vote of the trustees of the business trust that is equal to or greater than the vote cast for entity conversion pursuant to subsection A of § 13.1-1274.

B. Unless otherwise provided in a plan of entity conversion of a domestic partnership to become a domestic business trust, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the partnership without action by the partners in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, by a vote of the partners of the domestic partnership that is equal to or greater than the vote cast for the plan of entity conversion pursuant to subsection B of § 13.1-1274.

C. Unless otherwise provided in a plan of entity conversion of a domestic limited partnership to become a domestic business trust, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the limited partnership without action by the partners in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, by a vote of the partners of the domestic limited partnership that is equal to or greater than the vote cast for the plan of entity conversion pursuant to subsection C of § 13.1-1274.

D. Unless otherwise provided in a plan of entity conversion of an other entity to become a domestic business trust, after the plan has been approved as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the other entity without action by the persons who had authority to approve the entity conversion in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, by a vote of the persons who had authority to approve the entity conversion on behalf of the other entity that is equal to or greater than the vote cast for the plan of entity conversion pursuant to subsection D of § 13.1-1274.

E. If an entity conversion is abandoned under subsection A, B, C, or D after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2002, c. 621; 2016, c. 288.

Article 13 - REPORTS AND RECORDS

§ 13.1-1278. Trust records

A. A business trust shall keep minutes of all meetings of its beneficial owners and trustees, a record of all actions taken by the beneficial owners or trustees without a meeting, and a record of all actions taken by a committee of the trustees on behalf of the business trust.

B. A business trust shall maintain appropriate accounting records.

C. A business trust or its agent shall maintain a record of its beneficial owners, in a form that permits preparation of a list of the names and addresses of all beneficial owners, in alphabetical order by class and series, if any, of beneficial interests showing the number and class and series, if any, of beneficial interests held by each.

D. A business trust shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A business trust shall keep a copy of the following records:

1. Its articles or restated articles of trust and all amendments to them currently in effect;

2. Its governing instrument and all amendments to it currently in effect;

3. Resolutions adopted by its trustees creating one or more classes or series of beneficial interests, and fixing their relative rights, preferences, and limitations, if beneficial interests issued pursuant to those resolutions are outstanding;

4. The minutes of all meetings of beneficial owners, and records of all action taken by beneficial owners without a meeting, for the past three years;

5. All written communications to beneficial owners generally within the past three years; and

6. A list of the names and business addresses of its current trustees and officers.

2002, c. 621.

§ 13.1-1279. Inspection of records by beneficial owners

A. Subject to subsection C of § 13.1-1280, a beneficial owner of a business trust is entitled to inspect and copy, during regular business hours at the business trust's principal office, any of the records of the business trust described in subsection E of § 13.1-1278 if he gives the business trust written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A beneficial owner of a business trust is entitled to inspect and copy, during regular business hours at a reasonable location specified by the business trust, any of the following records of the business trust if the beneficial owner meets the requirements of subsection C of this section and gives the business trust written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the trustees, records of any action of a committee of the trustees while acting in or on behalf of the business trust, minutes of any meeting of the beneficial owners, and records of action taken by the beneficial owners or trustees without a meeting, to the extent not subject to inspection under subsection A of this section;

2. Accounting records of the business trust; and

3. The record of beneficial owners.

C. A beneficial owner may inspect and copy the records identified in subsection B of this section only if:

1. He has been a beneficial owner of record for at least six months immediately preceding his demand or is the holder of record of at least five percent of all of the outstanding beneficial interests;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a business trust's articles of trust or governing instrument.

E. This section shall not affect:

1. The right of a beneficial owner to inspect records, if the beneficial owner is in litigation with the business trust, to the same extent as any other litigant; or

2. The power of a court, independently of this chapter, to compel the production of trust records for examination.

2002, c. 621.

§ 13.1-1280. Scope of inspection right

A. A beneficial owner's agent or attorney has the same inspection and copying rights as the beneficial owner he represents.

B. The right to copy records under § 13.1-1279 includes, if reasonable, the right to receive copies made by photographic or other means.

C. The business trust may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the beneficial owner. The charge may not exceed the estimated cost of production or reproduction of the records.

D. The business trust may comply with a beneficial owner's demand to inspect the record of beneficial owners under subdivision 3 of subsection B of § 13.1-1279 by providing him with a list of its beneficial owners that was compiled no earlier than the date of the beneficial owner's demand.

2002, c. 621.

§ 13.1-1281. Court-ordered inspection

A. If a business trust does not allow a beneficial owner who complies with subsection A of § 13.1-1279 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the business trust's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the business trust's expense upon application of the beneficial owner.

B. If a business trust does not within a reasonable time allow a beneficial owner to inspect and copy any other record, the beneficial owner who complies with subsections B and C of § 13.1-1269 may apply to the circuit court in the city or county where the business trust's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the business trust to pay the beneficial owner's costs, including reasonable counsel fees, incurred to obtain the order if the beneficial owner proves that the business trust refused inspection without a reasonable basis of doubt about the right of the beneficial owner to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding beneficial owner.

2002, c. 621.

Article 14 - MISCELLANEOUS

§ 13.1-1282. Construction and application of chapter and governing instrument

A. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

B. This chapter shall be construed in furtherance of the policies of giving maximum effect to the principle of freedom of contract and of enforcing governing instruments.

C. To the extent any provision of this chapter is inconsistent with the provisions of Sections 856 through 859 of the United States Internal Revenue Code of 1986, as amended, or any successor provision, such provisions of the Internal Revenue Code shall prevail with respect to any business trust formed under this chapter that also qualifies as a real estate investment trust under such provisions.

2002, c. 621.

§ 13.1-1283. Reservation of power to amend or repeal

The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign business trusts subject to this chapter shall be subject to the amendment or repeal.

2002, c. 621.

§ 13.1-1284. Application to existing real estate investment trusts and foreign business trusts

Unless otherwise provided, the provisions of this chapter shall apply to all real estate investment trusts created under former Chapter 9 (§ 6-577 et seq.) of Title 6 and Chapter 9 (§ 6.1-343 et seq.) of Title 6.1 as in effect immediately prior to the effective date of this chapter. The declaration of trust of every such real estate investment trust heretofore organized in this Commonwealth shall be subject to the provisions of this chapter.

2002, c. 621.

§ 13.1-1285. Property title records

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign business trust has changed or corrected its name, merged into a domestic or foreign corporation, limited liability company, business trust, limited partnership or partnership, converted into a domestic or foreign corporation, limited liability company, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the business trust is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign business trust has changed or corrected its name, merged into a corporation, limited liability company, business trust, limited partnership or partnership, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign business trust's jurisdiction of formation may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the business trust is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

2007, c. 771.