Code of Virginia

Virginia Nonstock Corporation Act

§ 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 (§ 13.1-893.1 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 property 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. Repealed

Repealed by Acts 2007, c. 925, cl. 2.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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. Reserved

Reserved.