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**HOUSE BILL NO. 439**

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by the House Committee on Labor and Commerce  
 on January 29, 2026)

(Patron Prior to Substitute—Delegate Hope)

*A BILL to amend and reenact §§ 13.1-803, 13.1-804, 13.1-804.1, 13.1-806 through 13.1-811, 13.1-813 through 13.1-816, 13.1-819 through 13.1-828, 13.1-831, 13.1-834, 13.1-835, 13.1-837 through 13.1-852.1, 13.1-852 through 13.1-860, 13.1-862, 13.1-864, 13.1-865, 13.1-867 through 13.1-870.1, 13.1-871, 13.1-872 through 13.1-897.1, 13.1-898.2 through 13.1-898.5, 13.1-899, 13.1-900, 13.1-902, 13.1-904 through 13.1-910, 13.1-912 through 13.1-923, 13.1-925 through 13.1-936.1, 13.1-937, 13.1-939, 13.1-945, 13.1-1002, and 13.1-1082 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 10 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-814.2 through 13.1-814.9, by adding sections numbered 13.1-837.1 and 13.1-837.2, by adding in Article 7 of Chapter 10 of Title 13.1 a section numbered 13.1-852.01, by adding in Chapter 10 of Title 13.1 an article numbered 7.2, consisting of sections numbered 13.1-852.3 through 13.1-852.7, by adding sections numbered 13.1-861.1, 13.1-871.2, 13.1-889.1, 13.1-894.1, 13.1-895.1, and 13.1-898.5:1, by adding in Chapter 10 of Title 13.1 an article numbered 11.2, consisting of sections numbered 13.1-898.8 through 13.1-898.14, by adding in Article 13 of Chapter 10 of Title 13.1 a section numbered 13.1-901.1, by adding in Chapter 10 of Title 13.1 an article numbered 13.1, consisting of sections numbered 13.1-918.1 and 13.1-918.2, and by adding a section numbered 13.1-935.2; and to repeal §§ 13.1-898.6 and 13.1-898.7 and Article 17.1 (§§ 13.1-944.1 through 13.1-944.7) of Chapter 10 of Title 13.1 of the Code of Virginia, relating to Virginia Nonstock Corporation Act.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 13.1-803, 13.1-804, 13.1-804.1, 13.1-806 through 13.1-811, 13.1-813 through 13.1-816, 13.1-819 through 13.1-828, 13.1-831, 13.1-834, 13.1-835, 13.1-837 through 13.1-852.1, 13.1-852 through 13.1-860, 13.1-862, 13.1-864, 13.1-865, 13.1-867 through 13.1-870.1, 13.1-871, 13.1-872 through 13.1-897.1, 13.1-898.2 through 13.1-898.5, 13.1-899, 13.1-900, 13.1-902, 13.1-904 through 13.1-910, 13.1-912 through 13.1-923, 13.1-925 through 13.1-936.1, 13.1-937, 13.1-939, 13.1-945, 13.1-1002, and 13.1-1082 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10 of Title 13.1 an article numbered 1.1, consisting of sections numbered 13.1-814.2 through 13.1-814.9, by adding sections numbered 13.1-837.1 and 13.1-837.2, by adding in Article 7 of Chapter 10 of Title 13.1 a section numbered 13.1-852.01, by adding in Chapter 10 of Title 13.1 an article numbered 7.2, consisting of sections numbered 13.1-852.3 through 13.1-852.7, by adding sections numbered 13.1-861.1, 13.1-871.2, 13.1-889.1, 13.1-894.1, 13.1-895.1, and 13.1-898.5:1, by adding in Chapter 10 of Title 13.1 an article numbered 11.2, consisting of sections numbered 13.1-898.8 through 13.1-898.14, by adding in Article 13 of Chapter 10 of Title 13.1 a section numbered 13.1-901.1, by adding in Chapter 10 of Title 13.1 an article numbered 13.1, consisting of sections numbered 13.1-918.1 and 13.1-918.2, and by adding a section numbered 13.1-935.2 as follows:**

**§ 13.1-803. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"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. When used with respect to a foreign corporation, the "articles of incorporation" of such entity means the document that is equivalent to the articles of incorporation of a domestic corporation.

"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.

"Charitable asset" means property that is given, received, or held for a charitable purpose.

"Charitable corporation" means a domestic corporation that is operated primarily or exclusively for one or more charitable purposes.

"Charitable purpose" means a purpose that (i) would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under § 501 (c)(3) of the Internal Revenue Code or (ii) is considered charitable under the laws of the Commonwealth or the Internal Revenue Code.

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60 "Commission" means the State Corporation Commission of Virginia.

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

64 "*Conversion*" means a transaction pursuant to § 13.1-898.9 or 13.1-928.2.

65 "Corporation" or "domestic corporation" means a corporation not authorized by law to issue shares,  
66 irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to  
67 the laws of the Commonwealth on January 1, 1986, or that, by virtue of articles of incorporation, amendment,  
68 or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation  
69 organized under laws other than the laws of the Commonwealth or that has become a domestic corporation of  
70 the Commonwealth pursuant to Article 11.1 (§ 13.1-898.1:1 et seq.) or Article 11.2 (§ 13.1-898.8 et seq.).

71 "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,  
72 including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 13.1-810, by  
73 electronic transmission.

74 "Disinterested director" means a director who, at the time action is to be taken under § 13.1-871,  
75 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)  
76 a familial, financial, professional, employment, or other relationship with a person who has a financial  
77 interest in the matter, either of which would reasonably be expected to ~~affect adversely~~ *impair* the objectivity  
78 of the ~~director~~ *director's judgment* when participating in the action, and if the action is to be taken under  
79 § 13.1-878 or 13.1-880, is also not a party to the proceeding. The presence of one or more of the following  
80 circumstances shall not by itself prevent a person from being a disinterested director: (a) nomination or  
81 election of the director to the ~~current~~ *board of directors by any director who is not a disinterested director*  
82 *with respect to the matter or by any person that has a material relationship with that director*, acting alone or  
83 participating with others; ~~who is so interested in the matter or~~; (b) service as a director of another corporation  
84 of which ~~an interested person is also~~ *a director who is not a disinterested director with respect to the matter,*  
85 *or any person that has a material relationship with that director, is or was also a director; or (c) at the time*  
86 *action is taken under § 13.1-852.7, status as a named defendant, as a director against whom action is*  
87 *demand, or as a director who approved the act being challenged.*

88 "*Distribution*" means a direct or indirect transfer of cash or other property or incurrence of indebtedness  
89 *by a corporation to or for the benefit of its members in respect of any of its membership interests. A*  
90 *distribution may be in the form of a payment of a dividend, a distribution of indebtedness of the corporation,*  
91 *a distribution in liquidation, or otherwise.*

92 "Document" means (i) any tangible medium on which information is inscribed, and includes ~~any writing~~  
93 ~~or written instrument~~ *handwritten, typed, printed, or similar instruments or copies of such instruments*, or (ii)  
94 an electronic record.

95 "Domestic," with respect to an entity, means an entity governed as to its internal affairs by the organic law  
96 of the Commonwealth.

97 "*Domestication*" means a transaction pursuant to § 13.1-898.2.

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

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

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

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

104 "Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-603.

105 "Effective date," when referring to a document for which effectiveness is contingent upon issuance of a  
106 certificate by the Commission, means the time and date determined in accordance with § 13.1-806.

107 "Effective date of notice" is defined in *subsection I of* § 13.1-810.

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

110 "Electronic record" means information that is stored in an electronic or other *nontangible* medium and is  
111 retrievable in paper form through an automated process used in conventional commercial practice, unless  
112 otherwise authorized in accordance with subsection J of § 13.1-810.

113 "Electronic transmission" or "electronically transmitted" means any form or process of communication,  
114 not directly involving the physical transfer of paper or ~~other~~ *another tangible* medium, that (i) is suitable for  
115 the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form  
116 by the recipient through an automated process used in conventional commercial practice, unless otherwise  
117 authorized in accordance with subsection J of § 13.1-810.

118 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock  
119 corporation.

120 "Eligible interests" means interests or shares.

121 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director

may accept duties that make the director 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.

~~"Entity conversion" means conversion. A certificate of entity conversion is the same as a certificate of conversion.~~

*"Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.*

*"Filing entity" means an unincorporated entity other than a general partnership.*

"Foreign," with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than the Commonwealth.

"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 a foreign partnership, foreign limited liability company, foreign limited partnership, or foreign business trust.

*"Fundamental transaction" means an amendment of the articles of incorporation or bylaws, merger, interest exchange, disposition of assets requiring member approval, domestication, conversion, or dissolution of a corporation.*

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

~~"Includes" denotes a partial definition.~~

~~"Incorporation surrender" has the same meaning as specified in § 13.1-898.1:1. A certificate of incorporation surrender is the same as a certificate of domestication.~~

"Individual" means a natural person.

"Interest" means either:

1. A membership; or

2. Either or both of the following rights under the organic law of a foreign or domestic governing an unincorporated entity:

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

2. ~~The~~ (ii) 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.

*"Interest holder" means a person who holds of record an interest.*

*"Interest holder liability" means:*

1. *Personal liability for a liability of a domestic or foreign stock corporation, a foreign corporation, or an unincorporated entity that is imposed on a person (i) solely by reason of the status of the person as an interest holder or (ii) by a provision the organic rules that make specified interest holders or a categories of interest holder liable in their capacity as interest holders for all or specified liabilities of the entity; or*

2. *An obligation of an interest holder under the organic rules of a domestic or foreign unincorporated entity to contribute to the entity.*

*"Internal Revenue Code" means the United States Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended.*

"Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

"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 *as provided for in its articles of incorporation or bylaws.*

~~"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.~~

*"Merger" means a transaction pursuant to § 13.1-894 or 13.1-928.1.*

*"Notice" has the same meaning as specified in § 13.1-810.*

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

184 eligible entity.

185 *"Organic rules" means the public organic record and the private organic rules of a domestic or foreign*  
186 *corporation or eligible association."*

187 *"Partnership" has the same meaning as specified in § 50.1-73.79.*

188 *"Person" includes an individual and an entity.*

189 *"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices*  
190 *of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the*  
191 *Commonwealth, so designated by the board of directors. The designation of the principal office in the most*  
192 *recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of this chapter.*

193 *"Private organic rules" means (i) the bylaws of a domestic or foreign corporation or domestic or foreign*  
194 *stock corporation or (ii) the rules, regardless of whether in writing, that govern the internal affairs of an*  
195 *unincorporated entity, are binding on all interest holders, and are not part of its public organic record.*  
196 *Where private organic rules have been amended or restated, "private organic rules" means the private*  
197 *organic rules as last amended or restated.*

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

200 *"Protected series" has the same meaning as specified in § 13.1-1002.*

201 *"Public organic record" means (i) the articles of incorporation of a domestic or foreign corporation or*  
202 *domestic or foreign stock corporation or (ii) the document, the filing of which is required to create an*  
203 *unincorporated entity. Where a public organic record has been amended or restated, the term means the*  
204 *public organic record as last amended or restated.*

205 *"Right to vote" or "having voting rights" means the right to vote with respect to the matter at hand.*

206 *"Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this chapter on which a*  
207 *corporation determines fixed for determining the identity of its the corporation's members and their*  
208 *membership interests for purposes of this chapter. The determination shall be made as of the close of business*  
209 *at the principal office of the corporation on the record date unless another time for doing so is specified when*  
210 *the record date is fixed.*

211 *"Registered limited liability partnership" has the same meaning as specified in § 50-73.79.*

212 *"Secretary" means the corporate officer or other individual to whom the board of directors has delegated*  
213 *responsibility under subsection C of § 13.1-872 for custody of the minutes of the meetings of the board of*  
214 *directors and of the members and authenticating records of the corporation.*

215 *"Shares" has the same meaning as specified in § 13.1-603.*

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

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

223 *"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.*

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

226 *"United States" includes any district, authority, bureau, commission, department, or any other agency of*  
227 *the United States.*

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

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

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

234 **§ 13.1-804. Filing requirements.**

235 *A. A No document shall satisfy the requirements of this section, and of any other section that adds to or*  
236 *varies these requirements, to be entitled to be filed with the Commission; under the provisions of this chapter*  
237 *unless (i) it satisfies the requirements of this section and any other section that adds to or varies these*  
238 *requirements and (ii)*

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

240 *C. B. The document shall contain the information required by this Act chapter. It may contain other*  
241 *information as well.*

242 *D. C. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format*  
243 *that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be*  
244 *in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every*  
245 *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. D.~~ 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 jurisdiction of formation of the foreign~~ corporation is incorporated, ~~which that~~ are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

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

1. By the ~~chairman chair~~ or any ~~vice-chairman vice-chair~~ 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. F.~~ Any annual report required to be filed by § 13.1-936 shall be signed in the name of the corporation by an officer, director, or other person authorized by the corporation to sign the annual report, or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

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

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

~~J. I.~~ The document shall be delivered to the Commission for filing and shall be accompanied by the ~~required~~ correct filing fee, ~~and~~ any charter or entrance fee ~~or~~, registration fee, ~~or penalty~~ required by this ~~Act chapter~~.

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

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

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

2. The facts may include:

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

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

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

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10 (§ 13.1-884 et seq.) ~~or 11 (§ 13.1-893.1 et seq.) of this Act, 11.1 (§ 13.1-898.1:1 et seq.), 11.2 (§ 13.1-898.8 et seq.), or 13 (§ 13.1-902 et seq.); and~~

b. "Plan" means a plan of *domestication, conversion, merger, or interest exchange*.

4. The following terms of a plan or filed document ~~may shall~~ 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. A *purpose that is required to be set forth in a filed document*;

c. The registered office *address* of any entity required in a filed document;

~~e. d.~~ The *name or qualification of the* registered agent of any entity required in a filed document;

~~d. e.~~ The number of members and designation of each class of members;

~~e. f.~~ The effective date of a filed document; and

~~f. g.~~ 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 2 a or to a document that is a matter of public record, ~~or if the affected members have not received nor has notice of the fact from been given by the corporation to the affected members~~, 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.

**§ 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, *13.1-898.4, 13.1-898.10*, 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; *put into effect and carry out the plan and decrees of the court relative thereto (i) through one or more amendments to the corporation's articles of incorporation containing terms and conditions permitted by this chapter; (ii) through a plan of merger, interest exchange, domestication, or conversion; or (iii) through dissolution of its corporate existence* 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 interest exchange, domestication, conversion, dissolution, or termination~~ which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;

2. ~~The text of each~~ Any provision relating to the articles of amendment, plan of merger, ~~or interest exchange, domestication, conversion, dissolution, or termination~~ approved by the court;

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

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

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

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

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.

**§ 13.1-806. Effective time and date of document.**

A. Except as otherwise provided in § 13.1-807 and Article 1.1 (§ 13.1-814.2 et seq.), 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 or date specified in the articles. In that event the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. If a delayed effective date is specified, but no time is specified, the effective time shall be 12:01 a.m. on the date specified. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding subsection A, any certificate that has a delayed effective time or date shall not become effective if, prior to the effective time and date, a statement of cancellation signed by each party to the articles to which the certificate relates is delivered to the Commission for filing. If the Commission finds that the statement of cancellation complies with the requirements of law, it shall, by order, cancel the certificate.

C. A statement of cancellation shall contain:

1. The name of the corporation;

2. The name of the articles and the date on which the articles were filed with the Commission;

3. The time and date on which the Commission's certificate becomes effective; and

4. A statement that the articles are being canceled in accordance with this section.

D. 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.

E. For articles with a delayed effective date and time, the effective date and time shall be Eastern Time.

**§ 13.1-807. Correcting filed articles.**

A. Articles filed with the Commission may be corrected if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized or defectively signed, 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 that:

1. Set forth the name of the corporation prior to filing;
2. Describe the articles to be corrected, including their effective date;
3. Specify the inaccuracy or defect to be corrected;
4. Correct the inaccuracy or defect; and
5. State that the ~~board of directors~~ *corporation* authorized the correction and the date of such authorization.

C. If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction. 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.

**§ 13.1-808. Evidentiary effect of copy of filed document.**

A certificate ~~attached to~~ *delivered with* 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.

**§ 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 of good standing 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 and, if applicable, the designated name adopted for use in the Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of the Commonwealth, the date of its incorporation, which is the original date of incorporation or formation of the domesticated or converted corporation if the corporation was domesticated from a foreign jurisdiction or was converted from a domestic *or foreign* eligible entity, 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 chapter have been paid *except for any annual registration fee that is not due*;

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 has not become effective or 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.

**§ 13.1-810. Notices and other communications.**

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

A. ~~Notice~~ 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 *under this chapter* shall be in the English language. A notice or other communication *under this chapter* may be given ~~or sent~~ by any method of delivery except that an electronic transmission shall be in accordance with this section. If ~~these~~ *the* methods of delivery are impracticable, a notice or other communication may be ~~communicated by publication~~ *in given by a broad non-exclusionary dissemination to the public, which may include 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 or other methods of distribution that the corporation has previously identified to its members, including posting on the corporation's website.*

C. ~~Notice~~ A notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be delivered to ~~its~~ *the corporation's* registered agent at its registered office or to the secretary ~~of at the corporation~~ *at its corporation's* 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~~ A notice or other communication may be delivered by electronic transmission if consented to by the recipient or if *otherwise* 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~~; however, 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~~ A 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~~ office; 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 return receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the United States mail;

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

5. If oral, when communicated.

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

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

*L. If any provisions of this chapter are 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 § 102(a)2 or any successor provision of such federal act.*

*M. Whenever notice would otherwise be required to be given under any provision of this chapter to a member, the notice is not required to be given to such member if the notices of two consecutive annual meetings, and all notices of meetings during the period between two such consecutive annual meetings, have been sent, other than by electronic transmission, to such member at such member's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered. If any such member delivers to the corporation a written notice setting forth such member's then-current address, the requirement that notice be given shall be reinstated.*

#### **§ 13.1-810.1. Number of members.**

A. For purposes of this ~~Act~~ chapter, 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~~ *chapter*, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

**§ 13.1-811. Penalty for signing false documents.**

A. It shall be unlawful for any person to sign a document ~~which he~~ *that the person* 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.

**§ 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 *delivered to* 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~~ *in or outside of* 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, *correction*, merger, *interest exchange*, domestication, *conversion*, *dissolution*, 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~~ *in or outside of* 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 *articles of correction filed by the corporation pursuant to § 13.1-807* or a petition filed by ~~a~~ *the* 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~~ *on the Commission's* own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

**§ 13.1-814. Shares of stock and dividends prohibited.**

A. A corporation shall not issue shares of stock. ~~No~~ *Except as provided in subsection E of § 13.1-837*, 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~~ *chapter* upon dissolution or final liquidation and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

**§ 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.

*Article 1.1.*

*Ratification of Defective Corporate Actions.*

**§ 13.1-814.2. Definitions.**

*As used in this article, unless the context requires a different meaning:*

*"Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee, an officer, or an agent of the corporation, or the*

556 members.

557 "Date of the defective corporate action" means the date, or the approximate date if the exact date is  
558 unknown, the defective corporate action was purported to have been taken.

559 "Defective corporate action" means any corporate action purportedly taken that is, and at the time such  
560 corporate action was purportedly taken would have been, within the power of the corporation, but is void or  
561 voidable due to a failure of authorization.

562 "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action  
563 in compliance with the provisions of this chapter, the articles of incorporation or bylaws, a corporate  
564 resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure  
565 would render such corporate action voidable.

566 "Validation effective time" with respect to any defective corporate action ratified under this article means  
567 the later of:

568 1. The time at which the ratification of the defective corporate action is approved by the members or, if  
569 approval of members is not required, the time at which the notice required by § 13.1-814.6 becomes effective  
570 in accordance with § 13.1-810; and

571 2. The time at which any document filed in accordance with § 13.1-814.8 becomes effective.

572 The validation effective time shall not be affected by the filing or pendency of a proceeding under  
573 § 13.1-814.9 or otherwise, unless ordered by the Commission.

574 **§ 13.1-814.3. Defective corporate actions.**

575 A. No defective corporate action shall be void or voidable if ratified in accordance with § 13.1-814.4 or  
576 validated in accordance with § 13.1-814.9.

577 B. Ratification under § 13.1-814.4 or validation under § 13.1-814.9 shall not be deemed to be the  
578 exclusive means of ratifying or validating any defective corporate action, and the absence or failure of  
579 ratification in accordance with this article shall not, of itself, affect the validity or effectiveness of any  
580 corporate action properly ratified under this chapter, common law, or otherwise, nor shall it create a  
581 presumption that any such corporate action is or was a defective corporate action or void or voidable.

582 **§ 13.1-814.4. Ratification of defective corporate actions.**

583 A. To ratify a defective corporate action under this section, other than the ratification of an election of the  
584 initial board of directors under subsection B, the board of directors shall adopt resolutions ratifying the  
585 action in accordance with § 13.1-814.5, stating:

586 1. The defective corporate action to be ratified;

587 2. The date of the defective corporate action;

588 3. The nature of the failure of authorization with respect to the defective corporate action to be ratified;  
589 and

590 4. That the board of directors approves the ratification of the defective corporate action.

591 B. In the event that a defective corporate action to be ratified relates to the election of the initial board of  
592 directors of the corporation under subdivision A 2 of § 13.1-822, a majority of the persons who, at the time of  
593 the ratification, are exercising the powers of directors may take an action stating:

594 1. The name of the person or persons who first took action in the name of the corporation as the initial  
595 board of directors of the corporation;

596 2. The earlier of the date on which such persons first took such action or were purported to have been  
597 elected as the initial board of directors; and

598 3. That the ratification of the election of such person or persons as the initial board of directors is  
599 approved.

600 C. If any provision of this chapter, the articles of incorporation or bylaws, any corporate resolution, or  
601 any plan or agreement to which the corporation is a party in effect at the time action under subsection A is  
602 taken requires member approval or would have required member approval at the date of the occurrence of  
603 the defective corporate action, the ratification of defective corporate action approved in the action taken by  
604 the directors under subsection A shall be submitted to the members for approval in accordance with  
605 § 13.1-814.5.

606 D. Unless otherwise provided in the action taken by the board of directors under subsection A, after the  
607 action by the board of directors has been taken and, if required, approved by the members, the board of  
608 directors may abandon the ratification at any time before the validation effective time without further action  
609 of the members.

610 **§ 13.1-814.5. Action of ratification.**

611 A. The quorum and voting requirements applicable to a ratifying action by the board of directors under  
612 subsection A of § 13.1-814.4 shall be the quorum and voting requirements applicable to the corporate action  
613 proposed to be ratified at the time such ratifying action is taken.

614 B. If the ratification of the defective corporate action requires approval by the members under subsection  
615 C of § 13.1-814.4, and if the approval is to be given at a meeting, the corporation shall notify each member  
616 as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate  
617 action, provided that notice shall not be required to be given to members whose identities or addresses for

notice cannot be determined from the records of the corporation. The notice shall state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and shall be accompanied by (i) either a copy of the action taken by the board of directors in accordance with subsection A of § 13.1-814.4 or the information required by subdivisions A 1 through 4 of § 13.1-814.4 and (ii) a statement that any claim that the ratification of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

C. Except as provided in subsection D with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the members required by subsection C of § 13.1-814.4 shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such member approval.

D. The approval by members to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

#### **§ 13.1-814.6. Notice.**

A. Unless member approval is required under subsection C of § 13.1-814.4, prompt notice of an action taken under § 13.1-814.4 shall be given to each member, regardless of whether entitled to vote, as of (i) the date of such action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to members whose identities or addresses for notice cannot be determined from the records of the corporation.

B. The notice shall contain (i) either a copy of the action taken by the board of directors in accordance with subsection A or B of § 13.1-814.4 or the information required by subdivisions A 1 through 4 or B 1, 2, and 3 of § 13.1-814.4, as applicable, and (ii) a statement that any claim that the ratification of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

C. No notice under this section is required with respect to any action required to be submitted to members for approval under subsection C of § 13.1-814.4 if notice is given in accordance with § 13.1-814.5.

D. A notice required by this section may be given in any manner permitted by § 13.1-810.

#### **§ 13.1-814.7. Effect of ratification.**

From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under § 13.1-814.9:

1. Each defective corporate action ratified in accordance with § 13.1-814.4 shall not be void or voidable as a result of the failure of authorization identified in the action taken under subsection A or B of § 13.1-814.4 and shall be deemed a valid corporate action effective as of the date of the defective corporate action; and

2. Any corporate action taken subsequent to the defective corporate action ratified in accordance with this article in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action shall be valid as of the time taken.

#### **§ 13.1-814.8. Filings.**

A. After a defective corporate action is ratified under this article for a document required by this chapter to be filed with the Commission, the corporation shall deliver to the Commission for filing:

1. If a filing with the Commission was previously made with respect to such defective corporate action and the Commission issued with respect thereto a certificate, the articles of ratification, which may serve to amend or substitute for the filing previously made; or

2. If no filing with the Commission was previously made with respect to such defective corporate action, the articles required by this chapter.

B. The document required by subsection A shall set forth:

1. The defective corporate action that is the subject of the filed document;

2. The date of the defective corporate action;

3. The nature of the failure of authorization in respect of the defective corporate action;

4. A statement that the defective corporate action was ratified in accordance with § 13.1-814.4, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the members approved the ratification of such defective corporate action; and

5. The information required by subsection C.

C. The document shall also contain the following information:

1. If a filing with the Commission was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with § 13.1-814.4, the filed document shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit;

2. If a filing was previously made in respect of the defective corporate action and such filing requires any

change to give effect to the ratification of such defective corporate action in accordance with § 13.1-814.4, the filed document shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; (ii) a statement that a filing containing all of the information required to be included under the applicable sections of this chapter to give effect to such defective corporate action is attached as an exhibit; and (iii) the date and time that such filing is deemed to have become effective; or

3. If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under § 13.1-814.4 would have required a filing under any other section of this chapter, the filed document shall set forth (i) a statement that a filing containing all of the information required to be included under the applicable sections of this chapter to give effect to such defective corporate action is attached as an exhibit and (ii) the date and time that such filing is deemed to have become effective.

D. If the Commission finds that the filed document complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of ratification of defective corporate action.

**§ 13.1-814.9. Commission proceedings regarding validity of corporate actions.**

A. Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any member of the corporation, including any such member as of the date of the defective corporate action ratified under § 13.1-814.4, or any other person claiming to be substantially and adversely affected by a ratification under § 13.1-814.4, the Commission may:

1. Determine the validity and effectiveness of any corporate action or defective corporate action;
2. Determine the validity and effectiveness of any ratification under § 13.1-814.4; and
3. Modify or waive any of the procedures specified in § 13.1-814.4 or 13.1-814.5 to ratify a defective corporate action.

B. In connection with an action under this section, the Commission may make such findings or orders and take into account any factors or considerations regarding such matters as it deems proper under the circumstances.

C. Service of process of the application under subsection A on the corporation may be made in any manner provided by statutes of the Commonwealth or by rule of the Commission for service on the corporation, and no other party need be joined in order for the Commission to adjudicate the matter. In an action filed by the corporation, the Commission may require that notice of the action be provided to other persons specified by the Commission and permit such other persons to intervene in the action.

D. Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought in a petition filed within 120 days of the validation effective time.

**§ 13.1-815. Fees to be collected by Commission; application of payment; payment of fees prerequisite to Commission action; exceptions.**

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the annual report required by § 13.1-936, 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 chapter or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation, a certificate of conversion with respect to a foreign eligible entity, or a certificate of entity conversion with respect to a domestic corporation that will become a domestic eligible entity until the annual registration fee has been paid by or on behalf of that corporation or eligible entity.

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 or, a certificate of incorporation surrender domestication for a domestic corporation, or a certificate of conversion for a domestic corporation that will become a foreign eligible entity;

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.

**§ 13.1-815.1. Charter and entrance fees for corporations.**

A. Every domestic corporation, upon the granting of its charter or upon *its incorporation by domestication or conversion*, 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.

C. For any domestic stock corporation that files articles of conversion to become a domestic corporation, the charter fee to be charged shall be an amount equal to the difference between the amount already paid as a charter fee by the domestic stock corporation and the amount that would be required by this section to be paid.

*D. If no charter or entrance fee has been previously paid to the Commission, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business in the Commonwealth.*

**§ 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 the filing of articles of ~~entity~~ conversion to convert a corporation to a ~~limited liability company~~ *an eligible entity*, the fee shall be \$100.

2. For filing any one of the following, the fee shall be \$25:

a. Articles of incorporation; *or domestication; or incorporation surrender.*

b. *Articles of conversion to convert an eligible entity into a corporation.*

c. Articles of amendment or restatement.

~~e.~~ d. Articles of merger.

~~d.~~ e. Articles of correction.

f. *Articles of ratification.*

~~e.~~ g. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

~~f.~~ h. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

~~g.~~ i. 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.~~ j. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

~~i.~~ k. A copy of an instrument of ~~entity~~ conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

~~j.~~ l. An application to ~~register or to~~ renew the registration of a corporate name.

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for *a certificate of* withdrawal of a foreign corporation.

h. A notice of release of a registered name.

4. For issuing a certificate pursuant to § 13.1-945, the fee shall be \$6.

**§ 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 Whether the corporation is to will or will not 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 *regarding*:

a. ~~Stating the~~ The purpose or purposes for which the corporation is organized;

b. ~~Regarding the~~ The management of the business and regulation of the affairs of the corporation;

c. Defining, limiting and regulating the powers of the corporation, its *board of directors*, and its members; ~~and~~

d. *The distribution of assets on dissolution;*

e. Any provision that under this ~~Aet~~ chapter is required or permitted to be set forth in the bylaws; *and*

f. *A provision limiting or eliminating any duty of a director, officer, or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit of or taking of the opportunity by the director, officer, or other person.*

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this ~~Aet~~ chapter.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection ~~L~~ K 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.~~

#### **§ 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 ~~Aet~~ chapter.

#### **§ 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.

#### **§ 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 *of incorporation*, 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 *a board of directors* who shall complete the organization of the corporation.

B. Action required or permitted by this ~~Aet~~ chapter to be taken by incorporators *or the initial directors* 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 *or initial director*.

C. An organizational meeting may be held in or out of the Commonwealth.

#### **§ 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~~ *in conflict* with law or, *unless the articles of incorporation provide otherwise*, the articles of incorporation.

C. *If the corporation is to have one or more classes of members, the bylaws may contain any provision designating the classes of members, stating the rights and qualification of the members of each class and conferring, limiting, or denying the right to vote.*

D. The bylaws may contain a requirement that any or all internal corporate claims shall be brought exclusively in a circuit court or a federal district court in the Commonwealth, and if so specified, in any additional courts in the Commonwealth or any other jurisdiction in which the corporation maintains its principal office. As used in this section, "internal corporate claims" means (i) any derivative action or proceeding brought on behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's members by any current or former officer, director, or member of the corporation; (iii) any action asserting a claim arising pursuant to this chapter or the corporation's articles of incorporation or bylaws; or (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in clause (i), (ii), or (iii). Notwithstanding any other provision of this chapter, to the extent any provision of this chapter allows or requires an action or proceeding to be brought in the circuit court of the county or city where the corporation's principal office or registered office is located or in any other specified court location, such action or proceeding shall be brought instead in a court in the Commonwealth specified in a provision of the bylaws, if any, authorized by this subsection and adopted prior to the commencement of such action or proceeding.

E. No provision of the bylaws authorized by subsection D shall have the effect of conferring jurisdiction on any court or over any person or claim and no such provision shall apply if none of the courts specified by such provision have the requisite personal and subject matter jurisdiction. If the court specified in such provision does not have such jurisdiction and another court in the Commonwealth does have such jurisdiction, then the internal corporate claim may be brought in such court in the Commonwealth or in or any other court with the requisite jurisdiction specified in the provision. No provision of the articles of incorporation or bylaws shall prohibit bringing an internal corporate claim in the courts of the Commonwealth or require any such claim to be determined by arbitration.

#### **§ 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 provisions that may be inconsistent with one or more provisions of this chapter with respect to:

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~~ not inconsistent 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~~ Shall not be used to impose liability on a ~~corporate~~ director, officer, employee, or agent of the corporation.

D. An emergency exists for purposes of this section and § 13.1-827 if there is a catastrophic event, including an attack on the United States or in any locality in which the corporation conducts its business or ordinarily holds meetings of the board of directors or members, an epidemic or pandemic, or a declaration of a national emergency by the United States government or an emergency by the locality in which the corporation's principal office is located, that affects the corporation and regardless of whether a quorum of the corporation's board of directors ~~cannot~~ or a committee can be readily be assembled because of some catastrophic event ~~cannot~~ convened for action.

#### **§ 13.1-825. Purposes.**

Every corporation incorporated under this ~~Act~~ chapter 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.

#### **§ 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;

928 5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend,  
 929 pledge, or otherwise dispose of, and deal *in and* with shares or other interests in, or obligations of, any other  
 930 entity;

931 6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other  
 932 obligations, which may be convertible into, or include the option to purchase, other securities or property of  
 933 the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or  
 934 income;

935 7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as  
 936 security for repayment;

937 8. To transact its business, locate offices, and exercise the powers granted by this chapter ~~within or~~  
 938 ~~without~~ *in or outside of* the Commonwealth;

939 9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix  
 940 their compensation, and lend them money and credit;

941 10. To make and amend bylaws, not ~~inconsistent with its articles of incorporation or in conflict~~ with the  
 942 laws of the Commonwealth *or, unless the articles of incorporation provide otherwise, the articles of*  
 943 *incorporation*;

944 11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational  
 945 purposes;

946 12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and  
 947 benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of  
 948 the corporation or any of its subsidiaries;

949 13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such  
 950 insurance after the relationship terminates;

951 14. To make payments or donations or do any other act not inconsistent with this section or any other  
 952 applicable law that furthers the business and affairs of the corporation;

953 15. To pay compensation or to pay additional compensation to any or all directors, officers, and  
 954 employees on account of services previously rendered to the corporation, whether or not an agreement to pay  
 955 such compensation was made before such services were rendered;

956 16. *Except as otherwise provided in subsection B, to be a promoter, partner, member, associate, or*  
 957 *manager of any partnership, joint venture, trust, or other entity.*

958 17. To cease its corporate activities and surrender its corporate franchise; and

959 ~~17.~~ 18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for  
 960 which the corporation is organized.

961 B. Each corporation other than a banking corporation, an insurance corporation, a savings institution or a  
 962 credit union shall have power to enter into partnership agreements, joint ventures or other associations of any  
 963 kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations,  
 964 savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a  
 965 limited liability company.

966 C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code  
 967 on railroads or other public service companies, banking corporations, insurance corporations, savings  
 968 institutions, credit unions, industrial loan associations or other special types of corporations shall not be  
 969 deemed repealed or amended by any provision of this chapter except where specifically so provided.

970 D. Each corporation ~~which~~ *that* is deemed a private foundation, as defined in § 509 of the Internal  
 971 Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income  
 972 and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such  
 973 corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of  
 974 self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as  
 975 defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to  
 976 liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as  
 977 defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized  
 978 after December 31, 1969, under this chapter or under the Virginia Nonstock Corporation Act (§ 13.1-201 et  
 979 seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; and to any corporation organized before  
 980 January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions  
 981 provided in § 508(e)(2)(B) or (C) of the Internal Revenue Code shall apply or unless the board of directors of  
 982 such corporation ~~shall elect~~ *has elected* that such restrictions as contained in this subsection shall not apply by  
 983 filing written notice of such election with the Attorney General and the clerk of the Commission on or before  
 984 December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall  
 985 include future amendments to such Code sections and corresponding provisions of future internal revenue  
 986 laws.

987 **§ 13.1-827. Emergency powers.**

988 A. In anticipation of or during an emergency ~~defined~~ *as described* in subsection D of § 13.1-824, the  
 989 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 *such* 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 *electronic transmission, press release, publication and, or 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. *During such an emergency, the board of directors, or if a quorum cannot be readily convened for a meeting, a majority of the directors present may take any action it determines to be practical and necessary to address circumstances of the emergency with respect to a meeting of members notwithstanding anything to the contrary in this chapter, the articles of incorporation, or bylaws, including to postpone any such meeting to a later time or date, with the record date for determining the members entitled to notice of, and to vote at, such meeting applying to the postponed meeting irrespective of § 13.1-844, unless the board of directors fixes a new record date. No person shall be liable and no meeting of members shall be postponed or voided for the failure to make a list of members available pursuant to § 13.1-845 if it was not practicable to allow inspection during such an emergency.*

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.

#### **§ 13.1-828. Lack of power to act.**

A. Except as provided in subsection B, *the validity of* corporate action ~~may~~ *shall* 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~~ *the* 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, *if equitable or if all affected persons are parties to the proceeding*, 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.

#### **§ 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:

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § 13.1-924, by 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.

C. Except as provided in subsection F, registration is effective for one year after the date an application is filed.

D. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

E. A foreign corporation whose registration of *its name* 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. The renewal application is effective when filed in accordance with this section and, except as provided in subsection F C, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

B. A foreign corporation renews the registration of its corporate name by filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § 13.1-762, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the state or country of incorporation, executed by the official who has

1052 *custody of the records pertaining to corporations.*

1053 F. C. A foreign corporation whose registration of its name is effective may thereafter obtain a certificate  
1054 of authority to transact business in the Commonwealth under the registered name or consent in writing to the  
1055 use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation  
1056 thereafter authorized to transact business in the Commonwealth. The registration terminates when the  
1057 domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact  
1058 business in the Commonwealth or consents to the authorization of another foreign corporation to transact  
1059 business in the Commonwealth under the registered name.

1060 G. D. A foreign corporation that has in effect a registration of its corporate name may release such name  
1061 by filing a notice of release of a registered name with the Commission.

1062 **§ 13.1-834. Change of registered office or registered agent.**

1063 A. A corporation may change its registered office or registered agent, or both, upon filing with the  
1064 Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

- 1065 1. The name of the corporation;  
1066 2. The address of its current registered office;  
1067 3. If the current registered office is to be changed, the post-office address, including the street and  
1068 number, if any, of the new registered office, and the name of the city or county in which it is to be located;  
1069 4. The name of its current registered agent;  
1070 5. If the current registered agent is to be changed, the name of the new registered agent; and  
1071 6. That after the change or changes are made, the corporation will be in compliance with the requirements  
1072 of § 13.1-833.

1073 B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its  
1074 registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-833.

1075 C. A corporation's registered agent may sign a statement of change as required above if (i) the business  
1076 address of the registered agent changes to another post office address within the Commonwealth or (ii) the  
1077 name of the registered agent has been legally changed. A corporation's new registered agent may sign and  
1078 submit for filing a statement of change as required above if (a) the former registered agent is a business entity  
1079 that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of  
1080 the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a  
1081 registered agent pursuant to § 13.1-833. In either instance, the registered agent or surviving entity shall  
1082 forthwith file a statement of change as required above, which shall recite that a copy of the statement shall be  
1083 mailed to the principal office address of the corporation on or before the business day following the day on  
1084 which the statement of change is filed.

1085 **§ 13.1-835. Resignation of registered agent.**

1086 A. A registered agent may resign as agent for the corporation by signing and filing with the Commission a  
1087 statement of resignation stating (i) the name of the corporation, (ii) the name of the agent, and (iii) that the  
1088 agent resigns from serving as registered agent for the corporation. The statement of resignation shall be  
1089 accompanied by a certification that the registered agent will have a copy of the statement mailed to the  
1090 principal office of the corporation by certified mail on or before the business day following the day on which  
1091 the statement is filed. When the statement of resignation takes effect, the registered office is also  
1092 discontinued.

1093 B. A statement of resignation takes effect on the earlier of (i) 12:01 a.m. on the thirty-first day after the  
1094 date on which the statement was filed with the Commission or (ii) the date on which a statement of change to  
1095 appoint a registered agent is filed, in accordance with § 13.1-834, with the Commission.

1096 **§ 13.1-837. Members.**

1097 A. A corporation may have one or more classes of members or may have no members. If the corporation  
1098 has one or more classes of members, the designation of such class or classes and the qualifications and rights  
1099 of the members of each class shall be set forth in the articles of incorporation or; if the articles of  
1100 incorporation so provide, in the bylaws.

1101 B. Except as provided in the articles of incorporation or bylaws, the corporation may admit members for  
1102 no consideration or for such consideration as determined by the board of directors. Any such consideration  
1103 may consist of any tangible property or benefit to the corporation, including cash, promissory notes, services  
1104 performed, or contracts for services to be performed, and payment may be made at such times and upon such  
1105 terms as are set forth in the articles of incorporation or bylaws, or to the extent not inconsistent with the  
1106 articles of incorporation or bylaws, as determined by the board of directors.

1107 C. A corporation may issue certificates evidencing membership interests therein. Membership interests  
1108 shall not be transferable, except as otherwise provided in the articles of incorporation or in the bylaws.

1109 D. Members shall not have voting or other rights except as provided in the articles of incorporation or if  
1110 the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1,  
1111 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by  
1112 amendment of the articles of incorporation.

1113 E. Except as provided for in the articles of incorporation or bylaws, a corporation shall not pay dividends

or distribute any part of its assets, income, or profits to its members. A charitable corporation shall only make a distribution to another charitable corporation that is a member of such corporation or has the power to appoint one or more of its directors. No such dividend or distribution shall, in any event, be made if the corporation is insolvent or would thereby be made insolvent of if the fair value of the assets of the corporation is or would thereby be made insufficient to meet its liabilities.

F. No member shall be personally liable for any liabilities of the corporation, including liabilities arising from the acts of the corporation.

**§ 13.1-837.1. Member's liability for dues, assessments, and fees.**

A. A corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws. Dues, assessments, and fees may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles of incorporation or bylaws.

B. The amount and method of collection of dues, assessments, and fees may be fixed in the articles of incorporation or bylaws, or the articles of incorporation or bylaws may authorize the board of directors or members to fix the amount and method of collection.

C. The articles of incorporation or bylaws may provide reasonable means, such as termination or suspension of membership, to enforce the collection of dues, assessments, and fees.

**§ 13.1-837.2. Termination and suspension.**

A. A membership in a corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

B. The articles of incorporation or bylaws may include a provision to permit a member to resign as a member.

C. A proceeding challenging a termination or suspension for any reason shall be commenced within one year after the effective date of the termination or suspension.

D. The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

**§ 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 *unless* (i) directors are elected by written consent as permitted by § 13.1-841 or (ii) the board of directors authorizes the meeting to be conducted solely by ballots submitted electronically, by mail, or by a combination of the two.

B. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2, meetings of members may be held at such place, in or ~~out~~ outside of the Commonwealth, as ~~may be provided in~~ at the place stated in or fixed in accordance with the bylaws or, ~~where~~ if 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.

**§ 13.1-839. Special meeting.**

A. A corporation shall hold a special meeting of members:

1. On call of the ~~chairman~~ chair 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 on the call 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 or bylaws, 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 corporation's secretary before the start of the 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~~ shall be the first date on which a signed member demand is delivered to the corporation's secretary. No written demand for a special meeting shall be effective unless written demands signed by members that satisfy the requirements of subsection A have been delivered to the corporation's secretary within 60 days of the earliest date on which such a demand delivered to the corporation's secretary was signed.

D. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2, ~~members' special meetings of members~~ may be held at such place in or ~~out~~ outside of the Commonwealth as ~~may be provided in the bylaws or, where not inconsistent~~ at the place stated in or fixed in accordance with the bylaws; ~~in the notice of the meeting~~. If no place is so stated or fixed, special meetings shall be held at the corporation's principal office.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-842 ~~may~~ shall be conducted at a special members' meeting.

1176 **§ 13.1-840. Court-ordered meeting.**

1177 A. The circuit court of the city or county where a corporation's principal office is located, or, if none in the  
 1178 Commonwealth, where its registered office is located, may, after notice to the corporation, order a meeting of  
 1179 members to be held:

1180 1. On petition of any member of the corporation entitled to participate in an annual meeting if an annual  
 1181 meeting was not held, *or action by written consent in lieu of an annual meeting did not become effective*,  
 1182 within 15 months after its last annual meeting or, if there has been no annual meeting, the date of its  
 1183 incorporation; or

1184 2. On petition of a member who signed a demand for a special meeting that satisfies the requirements of  
 1185 *subsection A of § 13.1-839* if:

1186 a. Notice of the special meeting was not given within 30 days after the date the demand was delivered to  
 1187 the corporation's secretary; or

1188 b. The special meeting was not held in accordance with the notice.

1189 B. The court may fix the *date*, time, and place of the meeting, determine the members entitled to  
 1190 participate in the meeting, specify a record date for determining members entitled to notice of and to vote at  
 1191 the meeting, prescribe the form and content of the meeting notice, *fix the quorum required for specific*  
 1192 *matters to be considered at the meeting or direct that the members represented at the meeting constitute a*  
 1193 *quorum for action on specific matters*, and enter other orders necessary to accomplish the purpose or  
 1194 purposes of the meeting.

1195 **§ 13.1-841. Corporate action without meeting.**

1196 A. 1. Corporate action required or permitted by this chapter to be taken at a meeting of the members may  
 1197 be taken without a meeting and without prior notice if the corporate action is taken by all members entitled to  
 1198 vote on the corporate action, in which case no corporate action by the board of directors shall be required.

1199 2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation *or*  
 1200 *bylaws* of a corporation, corporate action required or permitted by this chapter to be taken at a meeting of  
 1201 members may be taken without a meeting and without prior notice, if the corporate action is taken by  
 1202 members who would be entitled to vote at a meeting of members having voting power to cast not fewer than  
 1203 the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary  
 1204 to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were  
 1205 present and voted.

1206 3. The corporate action shall be evidenced by one or more written consents bearing the date of ~~execution~~  
 1207 *signature* and describing the corporate action taken, signed by the members entitled to take such corporate  
 1208 action without a meeting and delivered to the secretary of the corporation for ~~inclusion in the minutes or~~  
 1209 *filing by the corporation with the minutes of the meeting or* the corporate records. Any corporate action taken  
 1210 by written consent shall be effective according to its terms when the requisite consents are in possession of  
 1211 the corporation. Corporate action taken under this section is effective as of the date specified therein,  
 1212 provided the consent states the date of execution by each member.

1213 B. If not otherwise determined under § 13.1-840 or 13.1-844 *and if prior action by the board of directors*  
 1214 *is not required respecting the action to be taken without a meeting*, the record date for determining members  
 1215 entitled to take corporate action without a meeting is the ~~date the first member signs the consent under~~  
 1216 ~~subsection A~~ *a date on which a signed written consent is delivered to the corporation's secretary. If not*  
 1217 *otherwise fixed under § 13.1-840 or 13.1-844 and if prior action by the board of directors is required*  
 1218 *respecting the action to be taken without a meeting, the record date shall be the close of business on the day*  
 1219 *action by the board of directors is to be taken*. No written consent shall be effective to take the corporate  
 1220 action referred to therein unless, within ~~20~~ 60 days ~~after of the earliest date of execution appearing on which~~  
 1221 ~~a consent delivered to the corporation in the manner corporation's secretary as required by this section was~~  
 1222 *signed*, written consents *signed by the members having sufficient in number votes* to take corporate action ~~are~~  
 1223 ~~received by the corporation have been delivered to the corporation's secretary~~. A written consent may be  
 1224 revoked by a writing to that effect ~~received by the corporation prior to receipt by the corporation of delivered~~  
 1225 *to the corporation's secretary before* unrevoked written consents sufficient in number to take corporate action  
 1226 *are delivered to the corporation*.

1227 C. For purposes of this section, a written consent *and the signing thereof* may be accomplished by one or  
 1228 more electronic transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of  
 1229 a vote of ~~voting members taken at a meeting and may be described as such in any document filed with the~~  
 1230 ~~Commission under this chapter~~. *Unless the articles of incorporation or bylaws provide for a reasonable delay*  
 1231 *to permit tabulation or written consents, the action taken by written consent shall be effective when (i) written*  
 1232 *consents signed by the members having sufficient votes to take the action are delivered to the corporation's*  
 1233 *secretary or (ii) if an effective date is specified therein, any such date provided each consent states the date of*  
 1234 *execution by the consenting member*.

1235 D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on  
 1236 the action, the corporation shall give *the nonconsenting voting members* written notice of the ~~proposed~~  
 1237 corporate action, not ~~less more than five 10 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~~ after written consents sufficient to take the action have been delivered to the corporation's secretary. The notice shall reasonably describe the action taken and 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 more than five~~ 10 days ~~before it is taken~~ after the written consents sufficient to take action have been delivered to the corporation's secretary. The notice shall reasonably describe the action taken and 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. *The notice requirements in subsections D and E shall not delay the effectiveness of action taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent; however, this subsection shall not be construed to limit judicial power to fashion an appropriate remedy in favor of a member adversely affected by a failure to give such notice within the required time period.*

G. 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.

#### **§ 13.1-842. Notice of meeting.**

A. ~~4.~~ A corporation shall notify members of the date, time, and place, if any, of each annual and special members' meeting. ~~Such notice shall be given of members~~ no less than 10 nor more than 60 days before the meeting date except that notice of a ~~members'~~ special meeting of members to act on an amendment of the articles of incorporation, a plan of merger, *interest exchange*, domestication, *conversion*, 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. *If the board of directors has authorized participation for members by means of remote communication pursuant to § 13.1-844.2, the notice to the member shall describe the means of remote communication to be used.* 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 *as of the record date for determining members entitled to notice of 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, *or the bylaws* require otherwise, notice of an annual meeting *of members* need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting *of members* 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 *of members* is the day before ~~the effective date of the first notice is delivered~~ to members.

E. Unless the bylaws require otherwise, if an annual or special meeting *of members* is adjourned to a different date, time, or place, notice need not be given *of the new time, date, or place* if the new date, time, or place, if any, 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 not less than 10 days before the meeting date~~ to members entitled to vote at such adjourned meeting as of the ~~new~~ record date fixed for notice of such adjourned meeting.

#### **§ 13.1-843. Waiver of notice.**

A. A member may waive any notice required by this ~~Aet~~ chapter, the articles of incorporation, or the bylaws before or after the date and time ~~of the meeting that is the subject of such~~ stated in the 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 filing by the corporation with 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.

1300     **§ 13.1-844. Record date.**

1301     A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting  
1302 groups ~~in order to make a determination of members for any purpose to determine the members entitled to~~  
1303 ~~notice of a members' meeting, to demand a special meeting, to vote or take action by written consent, or to~~  
1304 ~~take any other action.~~ If the bylaws do not fix or provide ~~for the manner of fixing a record date, the board of~~  
1305 ~~directors of the corporation may fix as in advance the record date the date on which it takes such action or a~~  
1306 ~~future date.~~

1307     B. A record date fixed under this section may not be more than 70 days before the meeting or action  
1308 requiring a determination of members.

1309     C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any  
1310 adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the  
1311 meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

1312     D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original  
1313 meeting, it may provide that the original record date continues in effect or it may fix a new record date.

1314     **§ 13.1-844.1. Conduct of the meeting.**

1315     A. At each meeting of members, a ~~chairman~~ *chair* shall preside. The ~~chairman~~ *chair* shall be appointed as  
1316 provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of  
1317 directors.

1318     B. Unless the articles of incorporation or bylaws provide otherwise, the ~~chairman~~ *chair* shall determine  
1319 the order of business and shall have the authority to establish rules for the conduct of the meeting.

1320     C. The ~~chairman~~ *chair* of the meeting shall announce at the meeting when the polls ~~will~~ open and close  
1321 for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the  
1322 beginning of the meeting and ~~to close~~ *closed* upon the final adjournment of the meeting.

1323     **§ 13.1-844.2. Remote participation in annual and special meetings.**

1324     A. Members may participate in any meeting of members by means of remote communication to the extent  
1325 the board of directors authorizes such participation for members. Participation *as a member* by means of  
1326 remote communication shall be subject to such guidelines and procedures *as* the board of directors adopts;  
1327 ~~and shall be in conformity with subsection B.~~

1328     B. Members participating in a members' meeting by means of remote communication shall be deemed  
1329 present and may vote at such a meeting if the corporation has implemented reasonable measures to:

- 1330         1. Verify that each person participating remotely *as a member* is a member or a member's proxy; and  
1331         2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters  
1332 submitted to the members, including an opportunity to read or hear the proceedings of the meeting,  
1333 substantially concurrently with such proceedings.

1334     C. Unless the articles of incorporation or bylaws require the meeting of members to be held at a place, the  
1335 board of directors may determine that any meeting of members shall not be held at any place and shall instead  
1336 be held solely by means of remote communication in conformity with subsection B.

1337     **§ 13.1-845. Members' list for meeting.**

1338     A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of  
1339 all its members who are entitled to notice of ~~a members' meeting.~~ ~~If the board of directors fixes a different~~  
1340 ~~record date to determine the members entitled and to vote at the meeting, a corporation shall also prepare an~~  
1341 ~~alphabetical list of the names of all its members who are entitled to vote at the a members' meeting.~~ A list  
1342 shall be arranged by voting group, and show the address of each member. *Nothing in this subsection shall*  
1343 *require the corporation to include on such list the electronic mail address or other electronic contact*  
1344 *information of a member.*

1345     B. The members' list for notice shall be available for inspection by any member, beginning ~~two five~~  
1346 ~~business days~~ after notice of the meeting is given for which the list was prepared and continuing through the  
1347 *close of business on the last day before the meeting*, (i) at the corporation's principal office or at a place  
1348 identified in the meeting notice in the county or city where the meeting will be held: ~~A members' list for~~  
1349 ~~voting shall be similarly available for inspection promptly after the record date for voting.~~ or (ii) *in the sole*  
1350 *discretion of the corporation, on a reasonably accessible electronic network, provided that the information*  
1351 *required to gain access to such list is provided with the notice of the meeting. In the event that the*  
1352 *corporation determines to make the list available on an electronic network, the corporation may take*  
1353 *reasonable steps to ensure that such information is available only to members of the corporation.* A member,  
1354 or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements  
1355 set forth in subsection of subsections C and G of § 13.1-933, to copy a list, during ~~the regular business hours~~  
1356 ~~and at the member's expense, during the period it is available for inspection.~~

1357     C: ~~If the meeting is to be held at a place, the corporation shall make the list of members entitled to vote~~  
1358 ~~available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at~~  
1359 ~~any time during the meeting or any adjournment.~~

1360     D: ~~If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a~~  
1361 ~~members' list before or at the meeting as provided in subsections B and C, 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.~~ *D.* Refusal or failure to prepare or make available ~~a~~ *the* members' list does not affect the validity of action taken at the meeting.

**§ 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 board of directors may authorize the meeting to be conducted solely by mail ballots submitted electronically, mail, or a combination of the two.~~

C. Unless the articles of incorporation ~~or bylaws~~ provide otherwise, in the election of directors by members, 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.

**§ 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. An electronic transmission shall contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.~~

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 count~~ votes. An appointment is valid for ~~11 months unless a longer period is expressly the term provided in the appointment form and, if no term is provided, for 11 months unless the appointment is irrevocable under subsection D.~~

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 pledge;
2. A creditor of the corporation who extended it credit under terms requiring the appointment;
- ~~2.~~ 3. An employee of the corporation whose employment contract requires the appointment; or
- ~~3.~~ 4. 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 count~~ 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~~ Unless the articles of incorporation or bylaws provide otherwise, any fiduciary who is entitled to vote any membership interest may vote such membership interest by proxy.

**§ 13.1-847.1. Voting procedures and inspectors of elections.**

A. A corporation may appoint one or more *persons as* 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~~ verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of ~~his~~ *the inspector's* ability. ~~An inspector may be an officer or employee of a corporation. An inspector may appoint or retain other persons to assist the inspector in the performance of the inspector's duties under subsection B, and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspector believes reliance is unwarranted.~~

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, *if not prohibited pursuant to subsection A of § 13.1-847*, and ballots; (iii) count all votes; and (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 *make a written report of the results.*

C. No ~~ballot~~ ballots, 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 performing their duties, the inspectors may examine (i) the proxy appointment forms or electronic transmissions and any other information provided in accordance with subsection B of § 13.1-847, (ii) any envelope or related writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or other information specified in § 13.1-848, and (v) the ~~regular~~ relevant books and records of the corporation relating to members and their entitlement to vote. ~~If the inspectors~~

E. The inspectors may also 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 believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection B. If the inspectors consider other information allowed by this subsection, they shall in their report required by subsection B specify the information considered by them, including the purpose for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate relevant and reliable.

F. Determinations of law by the inspectors are subject to de novo review by the court.

~~E.~~ G. 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.

#### **§ 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~~, committee, or curator representing the member and, if the corporation requests, evidence of ~~fiduciary~~ this 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 pledgee, 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~~ Three or fewer 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~~ person authorized to *accept or reject such instrument* or 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 *of election* under § 13.1-847.1, ~~who~~ *that* 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. *If an inspector of election has been appointed pursuant to § 13.1-847.1, the inspector of election also has the authority to request information and to make determinations under subsections A, B, C, and D.*

G. Corporate action based on the acceptance or rejection of a vote, *ballot*, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**§ 13.1-849. Quorum and voting requirements.**

A. The *articles of incorporation or* 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~~ *that* 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~~ *If a quorum exists, action on a matter, other than the election of directors, by the members is approved if the votes 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, favoring the action exceed the votes cast opposing the action* unless a greater proportion is required by this ~~Act or chapter~~, the articles of incorporation, *or the bylaws*. *An abstention shall not be considered a vote cast.* 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. *An amendment of the articles of incorporation or bylaws adding, changing, or deleting a quorum or voting requirement greater than specified in subsection A is governed by § 13.1-851.*

D. Less than a quorum may adjourn a meeting.

~~D.~~ E. The election of directors is governed by § 13.1-852.

**§ 13.1-850. Action by single and multiple voting groups.**

A. If the articles of incorporation, *the bylaws*, or this ~~Act~~ *chapter* provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 13.1-849.

B. If the articles of incorporation, *the bylaws*, or this ~~Act~~ *chapter* provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 13.1-849. Action may be taken by ~~one different voting group~~ *groups* on a matter ~~even though no action is taken by another voting group entitled to vote on the matter at different times.~~

**§ 13.1-851. Modifying quorum or voting requirements.**

A. The articles of incorporation *or bylaws* may provide for (i) a lesser or greater quorum requirement for members or voting groups of members than required by this chapter *or (ii) a greater voting requirement for members or voting groups of members than is provided for by this chapter.*

B. An amendment to the articles of incorporation *or bylaws* that adds, changes, or deletes a quorum or voting requirement shall meet the *same* quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

**§ 13.1-852. Voting for directors; cumulative voting.**

A. Unless otherwise provided in the articles of incorporation *or bylaws*, 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 *or bylaws* so provide.

C. A statement included in the articles of incorporation *or bylaws* 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* ~~the~~ meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; ~~or~~

1548 2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not  
1549 less than 48 hours before the time set for the meeting of the member's intent to cumulate his votes during the  
1550 meeting. If one member gives such a notice, all other members in the same voting group participating in the  
1551 election are entitled to cumulate their votes without giving further notice.

1552 E. If the articles of incorporation or bylaws authorize members to cumulate their votes when electing  
1553 directors, directors shall not be elected by written consent pursuant to § 13.1-841 unless the vote is  
1554 unanimous.

1555 **§ 13.1-852.01. Judicial determination of corporate offices and review of elections and member votes.**

1556 A. The termination or suspension of a member does not relieve the member from any obligations incurred  
1557 or commitments made prior to the termination or suspension.

1558 Upon application of, or in a proceeding commenced by, a person specified in subsection B, the circuit  
1559 court in the county or city in which the principal office of the corporation is located, or, if none in the  
1560 Commonwealth, in the county in which its registered office is located may determine:

1561 1. The result or validity of the election, appointment, removal, or resignation of a director or officer of the  
1562 corporation;

1563 2. The right of an individual to hold the office of director or officer of the corporation;

1564 3. The result or validity of any vote by the members of the corporation;

1565 4. The right of a director to membership on a committee of the board of directors; and

1566 5. The right of a person to nominate, or an individual to be nominated as, a candidate for election or  
1567 appointment as a director of the corporation, and any right under any provision of the articles of  
1568 incorporation, bylaws, a contract, or applicable law.

1569 B. Any application or proceeding pursuant to subsection A may be filed or commenced by any of the  
1570 following persons:

1571 1. The corporation;

1572 2. A member of the corporation with the right to vote;

1573 3. A director of the corporation, an individual claiming the office of director, or a director whose  
1574 membership on a committee of the board of directors is contested, who, in each case, is seeking a  
1575 determination of the individual's right to such office or membership;

1576 4. An officer of the corporation or an individual claiming to be an officer of the corporation, who, in each  
1577 case, is seeking a determination of the individual's right to such office; or

1578 5. A person claiming a right covered by subdivision A 5 and who is seeking a determination of such right.

1579 C. In connection with any application or proceeding under subsection A, the following shall be named as  
1580 defendants, unless such person made the application or commenced the proceeding:

1581 1. The corporation;

1582 2. An individual whose right to office or membership on a committee of the board of directors is  
1583 contested;

1584 3. Any individual claiming the office or membership at issue; and

1585 4. Any person claiming a right covered by subdivision A 5 that is at issue.

1586 D. In connection with any application or proceeding under subsection A, service of process may be made  
1587 upon each of the persons specified in subsection C either by:

1588 1. Serving on the corporation process addressed to such person in any manner provided by statute of the  
1589 Commonwealth or by rule of the applicable court for service of process on the corporation; or

1590 2. Serving on such person process in any manner provided by statute of the Commonwealth or by rule of  
1591 the applicable court.

1592 E. When service of process is made upon a person other than the corporation by service upon the  
1593 corporation pursuant to subdivision D 1, the plaintiff and the corporation promptly shall provide written  
1594 notice of such service, together with copies of all process and the application or complaint, to such person at  
1595 the person's last known residence or business address, or as permitted by statute of the Commonwealth, or by  
1596 rule of the applicable court.

1597 F. In connection with any application or proceeding under subsection A, the court shall dispose of the  
1598 application or proceeding on an expedited basis and also may:

1599 1. Order such additional or further notice as the court deems proper under the circumstances;

1600 2. Order that additional persons be joined as parties to the proceeding if the court determines that such  
1601 joinder is necessary for a just adjudication of matters before the court;

1602 3. Order an election or meeting to be held in accordance with the provisions of § 13.1-840 or otherwise;

1603 4. Appoint a master to conduct an election or meeting;

1604 5. Enter temporary, preliminary, or permanent injunctive relief;

1605 6. Resolve solely for the purpose of the proceeding any legal or factual issues necessary for the resolution  
1606 of any of the matters specified in subsection A, including the right and power of persons claiming the right  
1607 vote at any meeting of the members; and

1608 7. Order such relief as the court determines is equitable, just, and proper.

1609 G. It shall not be required to make members parties to a proceeding or application pursuant to this

section unless the member is a required defendant under subdivision C 4, relief is sought against the member individually, or the court orders joinder pursuant to subdivision F 2.

*H. Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court. An application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection A.*

**§ 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, *one or more directors* 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~~ *as set forth* (i) 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~~ *(ii)* 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 *and is made known to the corporation*;

2. Subject to amendment only 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 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~~ *were* elected or holding office when the agreement was

1672 made.

1673 H. No action taken pursuant to this section shall change any requirement to file articles or other  
1674 documents with the Commission or affect the rights of any creditors or other third parties.

1675 I. An agreement among the members or the directors of a corporation that is consistent with the other  
1676 provisions of this chapter that does not comply with the provisions of this section shall nonetheless be  
1677 effective among the members, the directors, and the corporation.

1678 *Article 7.2.*

1679 *Derivative Proceedings.*

1680 **§ 13.1-852.3. Standing; condition precedent; stay of proceedings.**

1681 A. No member shall commence or maintain a derivative proceeding unless the member:

1682 1. Was a member of the corporation at the time of the act or omission complained of;

1683 2. Became a member before public disclosure and without knowledge of the act or omission complained  
1684 of;

1685 3. Was a member at the time the member made the written demand required by subdivision B 1; and

1686 4. Fairly and adequately represents the interests of the corporation in enforcing the rights of the  
1687 corporation.

1688 B. No member shall commence a derivative proceeding until:

1689 1. A written demand has been made on the corporation to take suitable action; and

1690 2. Ninety days have expired from the date delivery of the written demand was made on the corporation  
1691 unless (i) the member has earlier been notified that the demand has been rejected by the corporation or (ii)  
1692 irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

1693 C. If the corporation commences an inquiry into the allegations made in the demand or complaint, the  
1694 court may stay any derivative proceeding for such period as the court deems appropriate.

1695 **§ 13.1-852.4. Discontinuance or settlement.**

1696 A. A derivative proceeding shall not be settled or discontinued without the court's approval. If the court  
1697 determines that a proposed discontinuance or settlement will substantially and adversely affect the interests  
1698 of the corporation's members or a class of the corporation's members, the court shall direct that notice be  
1699 given to the members affected.

1700 B. Notice required by subsection A shall be given in such manner as the court shall determine, and the  
1701 costs of such notice shall be borne in such manner as the court shall direct.

1702 **§ 13.1-852.5. Foreign corporations.**

1703 Notwithstanding the provisions of §§ 13.1-852.3 and 13.1-852.6, in any derivative proceeding in the right  
1704 of a foreign corporation, subject to the court's determination of whether the courts of the Commonwealth are  
1705 a convenient forum for such a proceeding, the matters covered by this article shall be governed by the laws of  
1706 the jurisdiction of formation of the foreign corporation except for matters covered by subsection C of  
1707 § 13.1-852.3 and §§ 13.1-852.4 and 13.1-852.7.

1708 **§ 13.1-852.6. Dismissal.**

1709 A. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the  
1710 groups specified in subsection B or E has:

1711 1. Conducted a review and evaluation, adequately informed in the circumstances, of the allegations made  
1712 in the demand or complaint;

1713 2. Determined in good faith on the basis of that review and evaluation that the maintenance of the  
1714 derivative proceeding is not in the best interests of the corporation; and

1715 3. Submitted in support of the motion a short and concise statement of the reasons for its determination.

1716 B. Unless a panel is appointed pursuant to subsection E, the determination in subsection A shall be made  
1717 by:

1718 1. A majority vote of disinterested directors present at a meeting of the board of directors if the  
1719 disinterested directors constitute a quorum; or

1720 2. A majority vote of a committee consisting of two or more disinterested directors appointed by a  
1721 majority vote of disinterested directors present at a meeting of the board of directors, regardless of whether  
1722 such disinterested directors constituted a quorum.

1723 C. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a  
1724 member, the complaint shall allege with particularity facts establishing that the requirements of subsection A  
1725 or B have not been met. With respect to any allegation that the requirements of subsection A or B have not  
1726 been met, the plaintiff shall be entitled to discovery if, and only with respect to, facts that are alleged in the  
1727 complaint with particularity.

1728 D. The plaintiff shall have the burden of proving that the requirements of subsection A or B have not been  
1729 met, except that the corporation shall have the burden with respect to the issue of disinterestedness under  
1730 subsection B if the complaint alleges with particularity facts raising a substantial question as to such  
1731 disinterestedness.

1732 E. Upon motion by the corporation, the court may appoint a panel of disinterested persons to make a  
1733 determination as to whether the maintenance of the derivative proceeding is in the best interests of the

1734 corporation.

1735 **§ 13.1-852.7. Payment of and security for expenses.**

1736 *On termination of a derivative proceeding, the court may:*

1737 1. *Order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the*  
1738 *proceeding has resulted in a substantial benefit to the corporation; or*

1739 2. *Order the plaintiff or the plaintiff's attorney to pay the corporation's or any defendant's expenses*  
1740 *incurred in defending the proceeding if it finds that the proceeding was commenced or maintained*  
1741 *arbitrarily, vexatiously, or not in good faith.*

1742 **§ 13.1-853. Requirement for and duties of board of directors.**

1743 A. Except as provided in an agreement authorized by § 13.1-852.1, each corporation shall have a board of  
1744 directors.

1745 B. All corporate powers shall be exercised by or under the authority of *the board of directors*, and the  
1746 business and affairs of the corporation *shall be* managed under the direction ~~of, its~~ and subject to the  
1747 oversight of the board of directors, subject to any limitation set forth in the articles of incorporation or in an  
1748 agreement authorized by § 13.1-852.1.

1749 **§ 13.1-854. Qualification of directors.**

1750 A. The articles of incorporation or bylaws may prescribe qualifications for directors *or for nominees for*  
1751 *director*. Unless the articles of incorporation or bylaws so prescribe, a *nominee or* director need not be a  
1752 resident of the Commonwealth or a member of the corporation.

1753 B. *No requirement that is based on a past, current, or prospective action, or on an expression of an*  
1754 *opinion, by a nominee or director that (i) relates to the discharge of a director's duties and (ii) could limit the*  
1755 *ability of the nominee or director to discharge his duties as a director shall be a permissible qualification for*  
1756 *a nominee or director under this section. Permissible qualifications for a nominee or director under this*  
1757 *section include the person's not being or having been subject to specified criminal, civil, or regulatory*  
1758 *sanctions or not having been removed as a director by judicial action or for cause.*

1759 C. *A qualification for nomination for director that is prescribed before a person's nomination shall apply*  
1760 *to the person at the time of the nomination. A qualification for nomination as a director that is prescribed*  
1761 *after a person's nomination shall not apply to that person with respect to such nomination.*

1762 D. *A qualification for directors that is prescribed before a person's nomination for director may provide*  
1763 *that it applies (i) only at the start of the director's term or (ii) during that person's term as director. A*  
1764 *qualification for directors prescribed during a director's term shall not apply to that director prior to the end*  
1765 *of that director's term.*

1766 **§ 13.1-855. Number and election of directors.**

1767 A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in  
1768 accordance with the ~~bylaws, or if not specified in or fixed in accordance with the bylaws, with the number~~  
1769 ~~specified in or fixed in accordance with the~~ articles of incorporation *or bylaws*. The number of directors may  
1770 be increased or decreased from time to time by amendment ~~to the bylaws, unless of, or in the manner~~  
1771 ~~provided in, the articles of incorporation provide that a change in the number of directors shall be made only~~  
1772 ~~by amendment of the articles of incorporation or bylaws.~~

1773 B. ~~The~~ *If members have a right to vote, the members may adopt a bylaw provision in the articles of*  
1774 *incorporation or bylaws fixing the number of directors and may direct that such bylaw provision not be*  
1775 *amended by the board of directors.*

1776 C. The articles of incorporation or bylaws may establish a variable range for the size of the board of  
1777 directors by fixing a minimum and maximum number of directors. If a variable range is established, the  
1778 number of directors may be fixed or changed from time to time, within the minimum and maximum, by the  
1779 members or the board of directors. ~~However, to the extent that the corporation has members with voting~~  
1780 ~~privileges, only the members may change the range for the size of the board of directors or change from a~~  
1781 ~~fixed to a variable-range size board or vice versa.~~

1782 D. Directors shall be elected or appointed in the manner provided in the articles of incorporation *or*  
1783 *bylaws*. If the corporation has members with voting ~~privileges~~ *rights*, directors shall be elected at the first  
1784 annual members' meeting and at each annual meeting thereafter ~~unless elected by written consent in lieu of an~~  
1785 ~~annual meeting as permitted by § 13.1-841 or their terms are staggered under § 13.1-858.~~

1786 E. No individual shall be ~~named~~ *appointed* or elected as a director without his prior consent.

1787 **§ 13.1-856. Election of directors by certain classes of members.**

1788 If the articles of incorporation *or bylaws* authorize dividing the members into classes, the articles of  
1789 incorporation *or bylaws* may also authorize the election of all or a specified number of directors by the  
1790 members of one or more authorized classes. Each class of *members* entitled to elect one or more directors is a  
1791 separate voting group for purposes of the election of directors.

1792 **§ 13.1-857. Terms of directors generally.**

1793 A. ~~In the absence of a provision in the articles of incorporation fixing a term of office, the term of office~~  
1794 ~~for a director shall be one year. Except for ex officio directors, the terms of the initial directors of a~~  
1795 ~~corporation expire at the first members' meeting at which directors are elected unless their terms are~~

1796 *staggered under § 13.1-858, in which case the term shall expire as provided for in the articles of*  
1797 *incorporation or bylaws.*

1798 B. ~~The terms of the initial directors of a corporation expire at the first members' meeting at which~~  
1799 ~~directors are elected, or if there are no members or the corporation's members do not have voting rights, at the~~  
1800 ~~end of such other period as may be specified in the articles of incorporation.~~

1801 ~~C. The terms of all other elected directors expire at the next annual meeting of members following the~~  
1802 ~~directors' election unless their terms are staggered under § 13.1-858 or, if there are no members or the~~  
1803 ~~corporation's members do not have voting rights, as provided in the articles of incorporation or bylaws. In the~~  
1804 ~~absence of a provision in the articles of incorporation or bylaws fixing a term of office, the term of office for~~  
1805 ~~a director shall be one year.~~

1806 ~~D. C. A decrease in the number of directors does not shorten an incumbent director's term.~~

1807 ~~E. D. The term of a director elected by the board of directors to fill a vacancy expires at the next members'~~  
1808 ~~meeting at which directors are elected or, if there are no members or the corporation's members do not have~~  
1809 ~~voting rights, as provided in the articles of incorporation.~~

1810 ~~F. E. Except in the case of ex-officio directors, despite the expiration of a director's term, a director~~  
1811 ~~continues to serve until his successor is elected and qualifies or until there is a decrease in the number of~~  
1812 ~~directors, if any.~~

1813 *F. The articles of incorporation or bylaws may provide for ex officio directors who shall serve in such*  
1814 *capacity, with such rights, subject to such limitations and for such term as is set forth in the articles of*  
1815 *incorporation or bylaws. Unless the articles of incorporation or bylaws provide otherwise, an ex officio*  
1816 *director shall be a voting director.*

1817 **§ 13.1-858. Staggered terms of directors.**

1818 ~~A. The articles of incorporation or bylaws may provide for staggering the terms of directors by dividing~~  
1819 ~~the total number of directors into groups, and the terms of office of the several groups need not be uniform.~~

1820 ~~B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of~~  
1821 ~~directors shall provide that at least three directors shall be elected at each annual members' meeting.~~

1822 **§ 13.1-859. Resignation of directors.**

1823 A. A director may resign at any time by delivering a written notice of resignation to the board of  
1824 directors, its chairman chair, the president, or the secretary of the corporation.

1825 B. A resignation is effective when the notice is delivered as provided in subsection I of § 13.1-810 unless  
1826 the notice specifies resignation provides for a later delayed effective time including a delayed effective time  
1827 determined upon a future event. If a resignation is made effective at a later time provides for a delayed time,  
1828 the board of directors may fill the pending vacancy before the effective time of the resignation if the board of  
1829 directors provides that the successor does not take office until the effective time of the resignation.

1830 C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with  
1831 of record in the office of the clerk of the Commission as a director of a corporation, who has resigned or  
1832 whose name is incorrectly of record may file a statement to that effect with the Commission.

1833 D. Upon the resignation of a director, the corporation may file an amended annual report with the  
1834 Commission indicating the resignation of the director and the successor in office, if any.

1835 **§ 13.1-860. Removal of directors.**

1836 A. ~~The~~ If the articles of incorporation or bylaws authorize the members to elect directors, the members  
1837 may remove one or more directors with or without cause, unless the articles of incorporation or bylaws  
1838 provide that directors may be removed only with for cause.

1839 B. If a director is elected by a voting group of members, only the members of that voting group may  
1840 participate in the vote to remove him.

1841 C. If cumulative voting in the election of directors is authorized by the articles of incorporation or  
1842 bylaws, a director may not be removed if, in the case of a members' meeting, the number of votes sufficient to  
1843 elect him under cumulative voting is voted against his removal. A director shall not be removed by action  
1844 taken by less than unanimous consent if members with votes sufficient to elect the director under cumulative  
1845 voting do not consent to removal. If cumulative voting in the election of directors is not authorized by the  
1846 articles of incorporation or bylaws, unless the articles of incorporation or bylaws require a greater vote, a  
1847 director may be removed if the number of votes cast to remove him such director constitutes a majority of the  
1848 votes entitled to be cast at an election of directors of the voting group or voting groups by which the director  
1849 was elected.

1850 D. If a corporation has no members or no members with voting rights, a director may be removed  
1851 pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director  
1852 may be removed by such vote as would suffice for his election.

1853 E. A director may be removed only by the members at a members' meeting if the meeting is called for the  
1854 purpose of removing him the director. The meeting notice shall state that the purpose or one of the purposes  
1855 of the meeting is removal of the director.

1856 F. Upon the removal of a director, the corporation may file an amended annual report with the  
1857 Commission indicating the removal of the director and the successor in office, if any.

**§ 13.1-861.1. Removal of directors by judicial proceeding.**

The circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located, may remove a director from office, and may bar the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that (i) the director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation and (ii) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

B. A member proceeding on behalf of the corporation under subsection A shall comply with all of the requirements of Article 7.2 (§ 13.1-852.3 et seq.) except for those set forth in subdivisions A 1 and 2 of § 13.1-852.3.

**§ 13.1-862. Vacancy on board of directors.**

A. Unless the articles of incorporation or bylaws 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 of directors, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation or bylaws 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 and only the remaining directors elected by that voting group, even if less than a quorum of the board of directors, are entitled to fill the vacancy if it is filled by the remaining directors.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § 13.1-859 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.

**§ 13.1-864. Meetings of the board of directors.**

A. The board of directors may hold regular or special meetings in or ~~out~~ outside 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.

**§ 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; or (iii) the number of directors as required by the articles of incorporation or bylaws to approve such action if it were taken at a meeting, 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, For an action by directors by less than unanimous written consent to be valid, (i) the corporation shall give written notice of to each director describing the proposed corporate action; to be taken by written consent 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 and (ii) prior to the taking of such action, no director shall have objected to the corporation to the taking of such action without a meeting. The corporation shall promptly notify each director of any such objection.~~ 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

1920 of the date specified therein provided the consent states the date of execution by each director.

1921 C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the  
1922 corporation prior to delivery to the corporation of unrevoked written consents signed by the requisite number  
1923 of directors.

1924 D. Any person, whether or not then a director, may provide that a consent to action as a director shall be  
1925 effective at a future time, including the time when an event occurs, but such future time shall not be more  
1926 than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes  
1927 of this section at the future time so specified for the consent to be effective, provided that (i) the person is a  
1928 director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such  
1929 consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

1930 E. For purposes of this section, a written consent *or an objection to taking action* and the signing thereof  
1931 may be accomplished by one or more electronic transmissions.

1932 F. A consent signed under this section has the effect of action taken at a meeting of the board of directors  
1933 and may be described as such in any document.

1934 **§ 13.1-867. Waiver of notice by director.**

1935 A. A director may waive any notice required by this ~~Aet chapter~~, the articles of incorporation, or bylaws  
1936 before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such  
1937 notice. Except as provided in subsection B ~~of this section~~, the waiver shall be in writing, signed by the  
1938 director entitled to the notice, and ~~filed delivered to the corporation's secretary for filing by the corporation~~  
1939 with the minutes *of the meeting* or corporate records.

1940 B. A director's attendance at or participation in a meeting waives any required notice to him of the  
1941 meeting unless the director at the beginning of the meeting, or promptly upon ~~his the director's~~ arrival,  
1942 objects to holding the meeting or transacting business at the meeting and does not ~~thereafter, after objecting,~~  
1943 vote for or assent to action taken at the meeting.

1944 **§ 13.1-868. Quorum and voting by directors.**

1945 A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of  
1946 all business or any particular business, or unless otherwise specifically provided in this ~~Aet chapter~~, a  
1947 quorum of ~~a the~~ board of directors consists of:

1948 1. A majority of the fixed number of directors *with the right to vote* if the corporation has a fixed board  
1949 size; or

1950 2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office  
1951 immediately before the meeting begins, if the corporation has a variable-range size board.

1952 B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no  
1953 fewer than one-third of the *specified or fixed* ~~or prescribed~~ number of directors determined under subsection  
1954 A.

1955 C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors *with the right*  
1956 *to vote* present is the act of the board of directors unless (i) the articles of incorporation or bylaws require the  
1957 vote of a greater number of directors *or (ii) expressly provided otherwise in this chapter.*

1958 D. A director who is present at a meeting of the board of directors or a committee of the board of directors  
1959 when corporate action is taken is deemed to have assented to the action taken unless:

1960 1. The director objects at the beginning of the meeting, or promptly upon ~~his such director's~~ arrival, to  
1961 holding it or transacting specified business at the meeting; ~~or~~

1962 2. ~~He votes against, or abstains~~ *The director's dissent or abstention* from; the action taken *is entered in the*  
1963 *minutes of the meeting; or*

1964 3. *The director delivers written notice of such director's dissent or abstention to the presiding officer of*  
1965 *the meeting before its adjournment or to the secretary of the corporation or meeting immediately after*  
1966 *adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in*  
1967 *favor of the action taken.*

1968 E. Except as *may be* provided in an agreement authorized by § 13.1-852.1, a director shall not vote by  
1969 proxy.

1970 F. Whenever this ~~Aet chapter~~ requires the board of directors to take any action or to recommend or  
1971 approve any proposed corporate act, such action, recommendation or approval shall not be required if the  
1972 proposed action or corporate act is adopted by the unanimous consent of members.

1973 **§ 13.1-869. Committees.**

1974 A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may ~~create~~  
1975 *establish* one or more committees and ~~appoint members~~ of the board of directors to ~~serve on them~~. *Each*  
1976 *committee shall have two or more members, who serve perform functions of the board of directors and*  
1977 *appoint two or more directors to serve on each committee. While non-board members may also be appointed*  
1978 *to a committee, they shall not vote on any matter for which the committee is performing a function of the*  
1979 *board of directors. Each committee member serves at the pleasure of the board of directors.*

1980 B. The creation of a committee and appointment of directors to it shall be approved by the greater number  
1981 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~~ *propose* to members action that this ~~Act~~ *chapter* 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 of the board of directors establishing~~ the committee provides otherwise, in the event of the absence or disqualification of a member of a committee ~~when there are no alternate members appointed by the board of directors~~, the member or members of the committee present at any meeting and not disqualified from voting may ~~unanimously~~ *by unanimous action* appoint another director to act in place of the absent or disqualified member ~~during such member's absence or disqualification~~.

F. A corporation may establish or authorize the establishment of one or more advisory committees whose members need not be directors. An advisory committee (i) is not a committee of the board of directors, (ii) shall not exercise any of the powers of the board of directors, and (iii) shall have no fiduciary duties or other responsibility to the corporation.

#### **§ 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~~ *the* 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.

#### **§ 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.

2044 D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any  
2045 amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before  
2046 such amendment.

2047 E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who  
2048 receives compensation from a community association for his services, the damages assessed arising out of a  
2049 single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by  
2050 the officer or director from the association during the 12 months immediately preceding the act or omission  
2051 for which liability was imposed. An officer or director who serves such an association without compensation  
2052 for his services shall not be liable for damages in any such proceeding.

2053 2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or  
2054 director engaged in willful misconduct or a knowing violation of the criminal law.

2055 3. As used in this subsection, "community association" shall mean a corporation incorporated under this  
2056 ~~Act~~ chapter that owns or has under its care, custody or control real estate subject to a recorded declaration of  
2057 covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the  
2058 incorporated association.

2059 4. The immunity provided by this subsection shall survive any termination, cancellation, or other  
2060 discontinuance of the community association.

2061 **§ 13.1-871. Director conflict of interests.**

2062 A. A conflict of interests transaction is a transaction with the corporation in which a director of the  
2063 corporation has an interest that precludes him from being a disinterested director. A conflict of interests  
2064 transaction is not voidable by the corporation solely because of the director's interest in the transaction if any  
2065 one of the following is true:

2066 1. The material facts of the transaction and the director's interest were disclosed or known to the board of  
2067 directors or a committee of the board of directors and the board of directors or committee authorized,  
2068 approved or ratified the transaction;

2069 2. The material facts of the transaction and the director's interest were disclosed to the members entitled to  
2070 vote and they authorized, approved or ratified the transaction; or

2071 3. The transaction was fair to the corporation.

2072 B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if  
2073 it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the  
2074 committee. A transaction shall not be authorized, approved, or ratified under this section by a single director.  
2075 If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is  
2076 present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who  
2077 is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is  
2078 otherwise authorized, approved or ratified as provided in that subsection.

2079 C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if  
2080 it receives the vote of a majority of the votes entitled to be counted under this subsection. The votes  
2081 controlled by a director who is not disinterested may not be counted in a vote of members to determine  
2082 whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The  
2083 director's votes, however, may be counted in determining whether the transaction is approved under other  
2084 sections of this ~~Act~~ chapter. A majority of the members, whether or not present, that are entitled to be  
2085 counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking  
2086 action under this section.

2087 **§ 13.1-871.2. Liability for unlawful distributions.**

2088 A. *A director who votes for or assents to a distribution in excess of what may be authorized and made*  
2089 *pursuant to this chapter, the articles of incorporation, or the bylaws is personally liable to the corporation*  
2090 *and its creditors for the amount of the distribution that exceeds what could have been distributed without*  
2091 *violating this chapter, the articles of incorporation, or the bylaws provided that the party asserting liability*  
2092 *establishes that when taking the action the director did not comply with § 13.1-870.*

2093 B. *A director held liable for an unlawful distribution under subsection A is entitled to:*

2094 1. *Contribution from every other director who could be held liable under subsection A for the unlawful*  
2095 *distribution; and*

2096 2. *Recoupment from the members who received the unlawful distribution in proportion to the amounts of*  
2097 *such unlawful distribution received by them respectively.*

2098 C. *No suit shall be brought against any director for any liability imposed by subsection A except within*  
2099 *two years after the right of action shall accrue.*

2100 D. *Contribution or recoupment under subsection B is barred unless it is commenced within one year after*  
2101 *the liability of the claimant has been finally adjudicated under subsection A.*

2102 **§ 13.1-872. Required officers.**

2103 A. Except as provided in an agreement authorized by § 13.1-852.1, a corporation shall have such officers  
2104 with such titles and duties as shall be ~~stated~~ described in the articles of incorporation or bylaws or in a  
2105 resolution of the board of directors that is ~~not inconsistent~~ in accordance with the articles of incorporation or

bylaws and as may be necessary to enable it to execute documents that comply with subsection F E of § 13.1-804.

B. ~~The Officers shall be elected by the~~ board of directors ~~may elect individuals to fill one or more offices of the corporation. An,~~ except that an officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary ~~of the corporation~~ or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing ~~and maintaining custody of the~~ minutes of the directors' and members' meetings and for ~~maintaining and~~ authenticating the records of the corporation ~~required to be kept under subsection E of § 13.1-932.~~

D. The same individual may simultaneously hold more than one office in the corporation.

E. ~~Election or appointment of an officer does not of itself create any contract rights in the officer or the corporation.~~

#### **§ 13.1-873. Duties of officers.**

A. Each officer has the authority and shall perform the duties set forth in the ~~articles of incorporation or~~ 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.

B. *In discharging his duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:*

1. *The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer believes in good faith to be reliable and competent in performing the responsibilities delegated; or*

2. *Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer believes in good faith to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer believes in good faith are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.*

#### **§ 13.1-874. Resignation and removal of officers.**

A. An officer may resign at any time by delivering a written notice to the ~~corporation~~ board of directors, its chair, the appointing officer, if any, or the corporation's secretary. 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 provides for a delayed effectiveness. If effectiveness is stated to be delayed and the board of directors or appointing officer, if any, accepts the delay, the board of directors or appointing officer, if any, may fill the pending vacancy before the effective time if the successor does delayed effectiveness; however, the new officer shall not take office until the effective time vacancy occurs.~~

B. ~~A board of directors may remove any~~ An officer may be removed 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 by (i) the board of directors; (ii) the appointing officer, if any, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the articles of incorporation, bylaws, or board of directors.~~ 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~~ of record in the office of the clerk of 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.

E. *As used in this section, "appointing officer" means an officer, including any successor to that officer, who, in accordance with subsection B of § 13.1-872, appointed the officer who is resigning or being removed.*

#### **§ 13.1-875. Definitions.**

~~As used 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, entity or 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.

2168 "~~Expenses~~" includes ~~counsel fees~~.

2169 "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax  
2170 assessed with respect to an employee benefit plan, or ~~reasonable~~ expenses incurred with respect to a  
2171 proceeding.

2172 "Official capacity" means, (i) when used with respect to a director, the office of director in a corporation;  
2173 ~~or and~~ (ii) when used with respect to an officer, as contemplated in § 13.1-881, the office in a corporation  
2174 held by the officer. "Official capacity" does not include service for any other ~~foreign or domestic corporation~~  
2175 ~~or any partnership, joint venture, trust, entity or~~ employee benefit plan; ~~or other entity~~.

2176 "Party" means an individual who was, is, or is threatened to be made a named defendant or respondent in  
2177 a proceeding.

2178 "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil,  
2179 criminal, administrative, arbitative, or investigative and whether formal or informal.

2180 **§ 13.1-876. Authority to indemnify.**

2181 A. Except as provided in subsection D, a corporation may indemnify an individual ~~made~~ *who is* a party to  
2182 a proceeding because the individual is or was a director against liability incurred in the proceeding if ~~the~~  
2183 ~~director~~:

2184 1. ~~Conducted~~ *The director*:

2185 a. *Conducted* himself in good faith;

2186 ~~2. b.~~ *Believed*:

2187 ~~a. (1)~~ In the case of conduct in his official capacity with the corporation, that his conduct was in its best  
2188 interests; and

2189 ~~b. (2)~~ In all other cases, that his conduct was at least not opposed to its best interests; and

2190 ~~3. c.~~ In the case of any criminal proceeding, ~~that he~~ had no reasonable cause to believe that his conduct  
2191 was unlawful; *or*

2192 2. *The director engaged in conduct for which broader indemnification has been made permissible or*  
2193 *obligatory as authorized by subsection C of § 13.1-883.*

2194 B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the  
2195 interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of  
2196 subdivision A ~~2~~ *1 b (2)*.

2197 C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo  
2198 contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard  
2199 of conduct described in this section.

2200 D. Unless ordered by a court under subsection ~~C~~ *B* of § 13.1-879.1, *or broader indemnification has been*  
2201 *made permissible or obligatory as authorized by subsection C of § 13.1-883*, a corporation ~~may~~ shall not  
2202 indemnify a director under this section:

2203 1. In connection with a proceeding by or in the right of the corporation except for ~~reasonable~~ expenses  
2204 incurred in connection with the proceeding if it is determined that the director has met the relevant standard  
2205 under subsection A; *or*

2206 2. In connection with any other proceeding charging improper personal benefit to the director, whether or  
2207 not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit  
2208 was improperly received by him.

2209 **§ 13.1-877. Mandatory indemnification.**

2210 Unless limited by its articles of incorporation *or bylaws*, a corporation shall indemnify a director who  
2211 ~~entirely prevails was wholly successful, on the merits or otherwise~~, in the defense of any proceeding to which  
2212 ~~he such director~~ was a party because ~~he such director~~ is or was a director of the corporation against  
2213 ~~reasonable~~ expenses incurred by ~~him such director~~ in connection with the proceeding.

2214 **§ 13.1-878. Advance for expenses.**

2215 A. A corporation may, *before final disposition of a proceeding, advance funds to* pay for or reimburse the  
2216 ~~reasonable~~ expenses incurred *in connection with a proceeding* by a director who is a party to a proceeding ~~in~~  
2217 ~~advance of final disposition of the proceeding~~ *because the individual is a director* if the director ~~furnishes~~  
2218 ~~delivers to~~ the corporation a signed written undertaking; ~~executed personally or on his behalf~~, to repay any  
2219 funds advanced if ~~he (i) the director~~ is not entitled to mandatory indemnification under § 13.1-877 and *(ii) it*  
2220 *is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard of conduct*  
2221 *the director is not entitled to indemnification.*

2222 B. The undertaking required by subsection A shall be an unlimited general obligation of the director but  
2223 need not be secured and may be accepted without reference to *the financial ability of the director* to make  
2224 repayment.

2225 C. Authorizations of ~~payments~~ under this section shall be made by:

2226 1. The board of directors:

2227 a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a  
2228 majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a  
2229 committee *consisting solely* 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 of directors 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.

**§ 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 for indemnification or an advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

1. Order indemnification if the court determines that the director is entitled to mandatory indemnification under § 13.1-877;

2. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by § 13.1-883; or

3. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable (i) to indemnify the director or (ii) to advance expenses to the director, even if, in the case of clause (i) or (ii), the director has not met the relevant standard of conduct set forth in subsection A of § 13.1-876, failed to comply with § 13.1-878, or was adjudged liable in a proceeding referred to in subsection D of § 13.1-876; however, if the director was adjudged so liable, indemnification shall be limited to expenses incurred in connection with the proceeding.

B. ~~The court shall order the corporation to make advances, reimbursement, or both, for expenses or to provide indemnification if it~~ If the court determines that the director is entitled to such advances, reimbursement or indemnification and under subdivision A 1 or to indemnification or advance for expenses under subdivision A 2, it shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision A 3, it may

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 court-ordered indemnification or advance for expenses.~~

~~D. C. 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 an advance, reimbursement, or both indemnification, 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 an advance, reimbursement, or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances an advance for expenses, reimbursement, or indemnification.~~

**§ 13.1-880. Determination and authorization of indemnification.**

A. A corporation ~~may~~ shall not indemnify a director under § 13.1-876 unless authorized in the for a specific case proceeding after a determination has been made that indemnification of the director is permissible because ~~he~~ the director 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 *with the right to vote*, 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.

**§ 13.1-881. Advances for expenses and indemnification of officers.**

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation *who is party to a proceeding because the individual is an officer is*

entitled to mandatory indemnification under § 13.1-877, and is entitled to apply for court-ordered *advance or reimbursement of expenses* and 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 who is a party to the proceeding because the individual is an officer~~ to the same extent as to a director.

**§ 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~~ individual in that capacity or arising from ~~his~~ such individual's status as a director or officer, *regardless of whether or not the corporation would have power to indemnify him or advance expenses to the individual against the same liability under § 13.1-876 or 13.1-877 this article.*

**§ 13.1-883. Application of article.**

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification *or advances or reimbursement of expenses* in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity *or advances or reimbursement of expenses* permitted or mandated by this article.

B. 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.~~ C. 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 *with the right to vote*, 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 of indemnification or advance for expenses created under this article and in effect at the time of an act or omission shall be reduced or, eliminated, or impaired by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment or a resolution of the board of directors or members adopted after the occurrence of such act or omission unless, in the case of a right created under subsection B or C, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such reduction, elimination, or impairment after such act or omission has occurred.*

E. No provision pursuant to subsection B shall obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless expressly provided otherwise. Any provision for indemnification or advance for expenses in the articles of incorporation or bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision A 4 of § 13.1-897.

F. 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.~~ G. 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.

H. The provisions of this article and Article 8 (§ 13.1-853 et seq.) shall apply to the same extent to any cooperative organized under the Code of Virginia.

**§ 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 or to delete a provision not required to be contained in the articles of incorporation.~~

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.

**§ 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~~ by the board of directors ~~as provided for in the articles of incorporation or, in the absence of such a provision, upon receiving the vote of at least two-thirds a majority of the directors in office. The board may adopt one or more amendments at any one meeting having voting rights.~~

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 corporate name; or~~
4. To make any other change expressly permitted by this ~~Act~~ chapter to be made without member action.

**§ 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~~ chapter, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors;
2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also ~~transmit to the members a recommendation~~ *recommend* 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 inform~~ the members of 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~~ *set conditions for approval of the amendment on any basis by the members or the effectiveness of the amendment.*

C. ~~The~~ *If member approval is to be sought at a members' meeting, 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 *shall* contain or be accompanied by a copy of the amendment.

D. Unless ~~this Act~~ *the articles of incorporation provide otherwise, or this chapter* or the board of directors, acting pursuant to subsection B, requires a greater vote, ~~approval of the amendment to be adopted shall be approved by~~ *requires the approval of* 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.

E. *An amendment of the articles of incorporation may be further amended prior to the effective date of the certificate of amendment of the articles of incorporation; however, if the members are required by any provision of this chapter or the articles of incorporation to vote on the amendment of the articles of incorporation, the amendment of the articles of incorporation shall not be further amended subsequent to approval of the amendment by such members without the approval of the members.*

**§ 13.1-887. Voting on amendments by voting groups.**

A. *Except as provided in the articles of incorporation or bylaws, if a corporation has more than one class of members with voting rights, the members of each class with voting rights are entitled to vote as a separate voting group, if member voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:*

1. *Effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class;*
2. *Effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class;*
3. *Change the rights, preferences, or limitations of all or part of the memberships of the class in a manner different than the amendment would affect another class;*
4. *Change the rights, preferences, or limitations of all or part of the memberships of the class by changing*

2416 *the rights, preferences, or limitations of another class;*

2417 5. *Increase or decrease the number of memberships authorized for that class;*

2418 6. *Increase the number of memberships authorized for another class; or*

2419 7. *Authorize a new class of memberships.*

2420 B. *If a class of members with voting rights will be divided into two or more classes by an amendment to*  
 2421 *the articles of incorporation, the amendment shall be approved by a majority of the members of each class*  
 2422 *that will be created.*

2423 C. *If a proposed amendment would affect less than all of the members of a class with voting rights in one*  
 2424 *or more of the ways described in subsection A of § 13.1-887, the members so affected are entitled to vote as a*  
 2425 *separate voting group on the proposed amendment.*

2426 D. *The articles of incorporation may provide that members of a class are entitled to vote as a separate*  
 2427 *voting group on any other specified amendments of the articles of incorporation.*

2428 **§ 13.1-887.1. Amendment prior to organization.**

2429 ~~When~~ *If a corporation has not yet completed its organization, its board of directors or incorporators, in the*  
 2430 *event that there is no board of directors, may adopt one or more amendments to the corporation's articles of*  
 2431 *incorporation.*

2432 **§ 13.1-888. Articles of amendment.**

2433 A. ~~A corporation amending its articles of incorporation shall file with the Commission articles of~~  
 2434 ~~amendment setting~~ *After an amendment of the articles of incorporation has been adopted and approved as*  
 2435 *required by this chapter, the corporation shall deliver to the Commission for filing articles of amendment that*  
 2436 *set forth:*

2437 1. *The name of the corporation;*

2438 2. *The text of each amendment adopted or the information required by subdivision L K 5 of § 13.1-804;*

2439 3. *The date of each amendment's adoption or approval;*

2440 4. *If an amendment (i) was adopted by the incorporators or the board of directors without member*  
 2441 *approval, a statement that the amendment was duly approved by the vote of at least two-thirds of the adopted*  
 2442 *by the board of directors in office or by a majority of the incorporators, as the case may be, including the*  
 2443 *reason that member and, if applicable, director or board of directors approval was not required;*

2444 5. ~~If an amendment (ii) was approved by the members, either:~~

2445 a. ~~A a statement that the amendment was adopted by unanimous consent of the members; or~~

2446 b. ~~A a statement that the amendment was proposed adopted by the board of directors and, was submitted~~  
 2447 *to the members in accordance with this Act and article, and was duly approved by the members in the*  
 2448 *manner required by this chapter and by the articles of incorporation; or (iii) is being filed pursuant to*  
 2449 *subdivision K 5 of § 13.1-804, a statement of:*

2450 (1) *The existence of a quorum of each voting group entitled to vote separately on the amendment; and*

2451 (2) *Either the total number of votes east for and against the amendment by each voting group entitled to*  
 2452 *vote separately on the amendment or the total number of undisputed votes east for the amendment by each*  
 2453 *voting group and a statement that the number east for the amendment by each voting group was sufficient for*  
 2454 *approval by that voting group to that effect.*

2455 B. *If the Commission finds that the articles of amendment comply with the requirements of law and that*  
 2456 *all required fees have been paid, it shall issue a certificate of amendment.*

2457 **§ 13.1-889. Restated articles of incorporation.**

2458 A. *A corporation's board of directors may restate its articles of incorporation at any time with or without*  
 2459 *member approval.*

2460 B. *The restatement may include one or more new amendments to the articles of incorporation. If the*  
 2461 *restatement includes a one or more new amendment amendments requiring member approval, it shall be*  
 2462 *adopted and approved as provided in § 13.1-886. If the restatement only includes an amendment one or more*  
 2463 *amendments that does do not require member approval, it shall be adopted as provided in § 13.1-885.*

2464 C. *If the board of directors submits a restatement for member approval, the corporation shall notify each*  
 2465 *member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice shall*  
 2466 *also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and*  
 2467 *contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in*  
 2468 *the articles.*

2469 ~~D.~~ *A corporation restating its articles of incorporation shall file with the Commission articles of*  
 2470 *restatement setting forth:*

2471 1. *The name of the corporation immediately prior to restatement;*

2472 2. *Whether the restatement contains a new amendment to the articles of incorporation;*

2473 3. *The text of the restated articles of incorporation or amended and restated articles of incorporation, as*  
 2474 *the case may be;*

2475 4. *Information required by subdivision L K 5 of § 13.1-804;*

2476 5. *The date of the restatement's adoption;*

2477 6. *If the restatement does not contain a new amendment to the articles, a statement that the restatement*



was adopted by the board of directors ~~adopted the restatement~~ or approved by the members;

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~~ a statement that the restatement (i) was adopted by the board of directors without member approval pursuant to § 13.1-885 or subdivision K 5 of § 13.1-804, as the case may be; 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~~ a statement that the restatement (i) was adopted by unanimous consent of the members or (ii) was adopted by the board of directors, was submitted to the members in accordance with this article, and was duly approved by the members in the manner required by this chapter and the articles of incorporation.

E. D. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of incorporation ~~or amended and restated articles of incorporation~~ supersede the original or previously restated articles of incorporation and all amendments to them.

F. E. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

**§ 13.1-889.1. Abandonment of amendment or restatement of articles of incorporation.**

A. After an amendment or restatement of the articles of incorporation has been adopted and approved as required by this article, and at any time before the certificate of amendment or restatement has become effective, the amendment or restatement of the articles of incorporation may be abandoned by the corporation without action by its members, if any, in the manner determined by the board of directors.

B. If articles of amendment or restatement of the articles of incorporation are abandoned after they have been filed with the Commission but before the certificate of amendment or restatement of the articles of incorporation has become effective, a statement of abandonment shall be signed by the corporation and delivered to the Commission for filing prior to the effective date of the certificate of amendment or restatement of the articles of incorporation. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and time the statement of abandonment was received by the Commission, and the amendment or restatement of the articles of incorporation shall be deemed abandoned and shall not become effective.

C. The statement of abandonment shall contain:

1. The name of the corporation;

2. The date on which the articles of amendment or restatement of the articles of incorporation were filed with the Commission;

3. The date and time on which the Commission's certificate of amendment or restatement becomes effective; and

4. A statement that the amendment or restatement of the articles of incorporation is being abandoned in accordance with this section.

**§ 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~~ affect a proceeding brought by or against the corporation in its former name.

**§ 13.1-892. Amendment of bylaws by board of directors or members.**

A. If a corporation has members with the right to vote, the members may amend or repeal the corporation's bylaws.

B. A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or § 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.

**§ 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~~ for the board of directors shall be effective only if it ~~meets~~ meet the same quorum requirement and is ~~be~~ adopted by the same vote required to take action under

the quorum and voting requirement then in effect.

# Article 11.

## Mergers and Interest Exchanges.

### § 13.1-893.1. Definitions.

As used in this article:

"Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes of its membership interests or eligible interests acquired in an interest exchange.

"Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes of membership interests or eligible interests of the acquired entity in an interest exchange.

"Merger" means a business combination pursuant to § 13.1-894.

"New interest holder liability" means interest holder liability of a person, resulting from a merger or interest exchange, that is (i) in respect of an entity that is different from the entity in which the person held membership interests or eligible interests immediately before the merger or interest exchange became effective or (ii) in respect of the same entity as the one in which the person held membership interests or eligible interests immediately before the merger or interest exchange became effective if (a) the person did not have interest holder liability immediately before the merger or interest exchange became effective or (b) the person had interest holder liability immediately before the merger or interest exchange became effective, the terms and conditions of which were changed when the merger or interest exchange became effective.

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger. *Party to a merger does not include a survivor created by the 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.

### § 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, resulting in a survivor that is a domestic corporation created in the merger.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created as the survivor of a merger in which a domestic corporation is a party but only if the merger is permitted by the organic law of the foreign corporation or eligible entity.

C. The plan of merger shall include:

1. As to each party to the merger, its name, jurisdiction of formation, and type of entity;

2. The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect;

3. The terms and conditions of the merger;

4. The manner and basis of converting 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 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;

6. Any amendment to the articles of incorporation of the survivor that is a domestic corporation or if the articles of incorporation are amended and restated, as an attachment to the plan, the survivor's restated articles of incorporation, or if a new domestic corporation is to be created by the merger, as an attachment to the plan, the survivor's articles of incorporation; and

7. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic ~~document~~ rules of any such party.

D. In addition to the requirements of subsection C, a plan of merger may contain any other provision not prohibited by law.

E. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection ~~E~~ K of § 13.1-804.

F. Unless the plan of merger provides otherwise, a plan of merger may be amended prior to the effective time and 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 the amendment is subject to the approval of 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 holders of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic corporation that will be the survivor 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.

**§ 13.1-894.1. Interest exchange.**

**A. Through an interest exchange:**

1. A domestic corporation may acquire all of the membership interests of one or more classes of members of another domestic or foreign corporation, or all of the eligible interests of one or more classes of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such membership interests or eligible interests, in exchange for membership interests or other securities, eligible interests, obligations, rights to acquire membership interests, other securities or eligible interests, cash, other property, or any combination of the foregoing, pursuant to a plan of interest exchange; or

2. All of the membership interests of one or more classes of members of a domestic corporation, as well as rights to acquire any such membership interests, may be acquired by another domestic or foreign corporation or other eligible entity, in exchange for membership interests or other securities, eligible interests, obligations, rights to acquire membership interests, other securities or eligible interests, cash, other property, or any combination of the foregoing, pursuant to a plan of interest exchange.

B. A foreign corporation or eligible entity shall be a party to an interest exchange only if the interest exchange is permitted by the organic law under which the corporation or eligible entity is organized or by which it is governed.

C. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of an interest exchange, a plan of interest exchange may be adopted and approved, and the interest exchange effectuated, in accordance with the procedures, if any, for a merger.

**D. The plan of interest exchange shall include:**

1. The name, jurisdiction of formation, and type of entity of each acquired entity and the name, jurisdiction of formation, and type of entity of the acquiring entity;

2. The terms and conditions of the interest exchange;

3. The manner and basis of exchanging membership interests of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity whose membership interests or eligible interests will be acquired under the interest exchange into membership interests or other securities, eligible interests, obligations, rights to acquire membership interests, other securities or eligible interests, cash, other property, or any combination of the foregoing;

4. The manner and basis for exchanging any rights to acquire membership interests of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity whose membership interests or eligible interests will be acquired under the interest exchange into membership interests or other securities, eligible interests, obligations, rights to acquire membership interests, other securities or eligible interests, cash, other property, or any combination of the foregoing; and

5. Any other provisions required by the organic law governing any foreign corporation or eligible entity that is a party to the interest exchange or its articles of incorporation or organic rules.

E. In addition to the requirements of subsection D, the plan of interest exchange may contain any other provision not prohibited by law.

F. Terms of a plan of interest exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection K of § 13.1-804.

G. Unless the plan of interest exchange provides otherwise, the plan of interest exchange may be amended prior to the effective date of the certificate of interest exchange, but if the members of a domestic corporation that is a party to the interest exchange are required by any provision of this chapter to vote on the plan, the plan shall not be amended subsequent to approval of the plan by such members to change any of the following, unless the amendment is subject to the approval of the members:

1. The amount or kind of membership interests or other securities, eligible interests, obligations, rights to acquire membership interests, other securities or eligible interests, cash, or other property or any combination of the foregoing to be issued by the corporation or to be received under the plan by the members of the acquired entity; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

H. This section does not limit the power of a domestic corporation to acquire membership interests of another domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than an interest exchange.

**§ 13.1-895. Action on plan of merger or interest exchange.**

A. In the case of a domestic corporation that is (i) a party to a merger, ~~where the members of any merging corporation have voting rights~~ (ii) an acquired entity in an interest exchange, or (iii) the acquiring entity in an interest exchange:

1. The plan of merger or interest exchange shall first be adopted by the board of directors.

2. Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit

2664 the plan to the members for their approval.

2665 The board of directors shall also transmit to the members a recommendation that the members approve the  
 2666 plan, unless the board of directors makes a determination that because of conflicts of interest or other special  
 2667 circumstances it should not make such a recommendation, in which case the board of directors shall ~~transmit~~  
 2668 ~~to inform~~ the members of the basis for that determination.

2669 B. The board of directors may ~~condition its submission~~ *set conditions for the approval* of the plan of  
 2670 merger ~~to or interest exchange by the members on any basis or the effectiveness of the plan of merger or~~  
 2671 *interest exchange*.

2672 C. If the plan of merger *or interest exchange* is required to be approved by the members, and if the  
 2673 approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to  
 2674 vote, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that  
 2675 the purpose, or one of the purposes, of the meeting is to consider the plan and *shall* contain or be  
 2676 accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic  
 2677 or foreign corporation or eligible entity and its members are to receive membership ~~or other interests or other~~  
 2678 *eligible interests or the right to receive membership interests or other eligible interests* in the ~~surviving~~  
 2679 ~~corporation or eligible entity survivor~~, the notice shall also include or be accompanied by a copy or summary  
 2680 of the articles of incorporation *and bylaws* or organic ~~document of that corporation or eligible entity~~ *rules of*  
 2681 *the survivor*. If the corporation is to be merged into a domestic or foreign corporation or eligible entity ~~that~~  
 2682 ~~and a new domestic or foreign corporation or eligible entity~~ is to be created pursuant to the merger ~~and its~~  
 2683 ~~members are to receive membership or other interests in the surviving corporation or eligible entity~~, the  
 2684 notice shall include or be accompanied by a copy or a summary of the articles of incorporation *and bylaws* or  
 2685 organic ~~document~~ *rules* of the new ~~domestic or foreign~~ corporation or eligible entity.

2686 D. Unless the articles of incorporation or *bylaws provide otherwise or* the board of directors acting  
 2687 pursuant to subsection B, requires a greater vote, *approval of the plan of merger to be authorized shall be*  
 2688 ~~approved by or interest exchange requires the approval of~~ each voting group entitled to vote on the plan by  
 2689 more than two-thirds of all the votes *entitled to be cast by that voting group at a meeting at which a quorum*  
 2690 ~~of the voting group exists~~. The articles of incorporation *or the bylaws* may provide for a greater or lesser vote  
 2691 than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is  
 2692 not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the  
 2693 ~~transaction plan of merger or interest exchange at a meeting at which a quorum of the voting group exists~~.

2694 E. Separate voting by voting groups is required:

2695 1. ~~On~~ *Except as otherwise provided in the articles of incorporation or bylaws, on a plan of merger by*  
 2696 *each class of members that:*

2697 a. ~~Whose membership interests are~~ *Is to be converted under the plan of merger into membership interests*  
 2698 ~~in a different domestic or foreign corporation, or, other securities, eligible interests or other securities,~~  
 2699 ~~obligations, rights to acquire membership interests, other securities, eligible interests or other securities, cash,~~  
 2700 ~~other property, or any combination of the foregoing, or is proposed to be eliminated without being converted~~  
 2701 ~~into any of the foregoing; or~~

2702 b. ~~Who would~~ *Would be entitled to vote as a separate group on a provision in the plan that, if contained in*  
 2703 *a proposed amendment to the articles of incorporation, would require action by separate voting groups under*  
 2704 *§ 13.1-887-;*

2705 2. *Except as otherwise provided in the articles of incorporation, on a plan of interest exchange, by each*  
 2706 *class of members included in the exchange, with each class constituting a separate voting group;*

2707 3. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting  
 2708 group to approve a plan of merger; *and*

2709 4. *On a plan of interest exchange, if the voting group is entitled under the articles of incorporation to vote*  
 2710 *as a voting group to approve a plan of interest exchange.*

2711 F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a plan  
 2712 of merger *or interest exchange* is not required if:

2713 1. The corporation will survive the merger *or is the acquiring corporation in an interest exchange;*

2714 2. Except for amendments permitted by ~~subsection B of~~ § 13.1-885, its articles of incorporation will not  
 2715 be changed; and

2716 3. Each ~~person who is a~~ member of the corporation *whose membership interests were outstanding*  
 2717 *immediately before the effective time of the merger or interest exchange will retain hold the same*  
 2718 *membership interest interests with identical designation, preferences, limitations, and rights immediately*  
 2719 *after the effective time of the merger or interest exchange.*

2720 G. ~~Where any merging~~ *If a corporation has no members, or no members having voting rights, a plan of*  
 2721 *merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of*  
 2722 *a majority of the directors in office not yet issued membership interests and its articles of incorporation or*  
 2723 *bylaws do not otherwise provide, its board of directors may adopt and approve a plan of merger or interest*  
 2724 *exchange on behalf of the corporation without member action.*

2725 H. If as a result of a merger *or interest exchange* one or more members of a domestic corporation would

become subject to ~~owner~~ new interest holder liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger shall require the execution or interest exchange shall require the signing in connection with the transaction, by each such member of a separate written consent to become subject to such ~~owner~~ new interest holder liability, unless in the case of a member that already has interest holder liability with respect to such domestic corporation, (i) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a member, and (ii) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce such interest holder liability.

**§ 13.1-895.1. Merger between parent and subsidiary or between subsidiaries.**

A. As used in this section:

"Parent entity" means a domestic or foreign corporation or eligible entity that holds membership interests in a domestic corporation that possess at least 90 percent of the voting power of each class of membership of the domestic corporation that has voting power.

"Subsidiary" means the domestic corporation whose membership interests are owned by a parent entity.

B. A parent entity may merge (i) a subsidiary into itself or another subsidiary or (ii) itself into a subsidiary without the approval of the board of directors or the members or any subsidiary and, if the parent entity is a domestic corporation, without the approval of the members of the parent entity, unless the articles of incorporation of any subsidiary or the articles of incorporation or the organic rules of the parent entity otherwise provide.

C. A parent entity shall be a foreign corporation or eligible entity only if the merger is permitted under the laws by which the foreign corporation or eligible entity is organized.

D. The parent entity shall, within 10 days after the effective date of the merger, notify each of the subsidiary's other members that the merger has become effective.

E. Except as provided in subsections B and C, a merger under this section shall be governed by the provisions of this article applicable to mergers generally.

**§ 13.1-896. Articles of merger or interest exchange.**

A. After a plan of merger or interest exchange has been adopted and approved as required by this Act chapter, the corporation shall deliver to the Commission for filing articles of merger ~~shall be executed or interest exchange signed~~ on behalf of each party to the merger. ~~The articles shall or interest exchange that 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 or interest exchange;

3. 2. The date the plan of merger or interest exchange was adopted or approved by each domestic corporation that was a party to the merger or interest exchange;

4. 3. If the plan of merger or interest exchange required approval by the members of a domestic corporation that was a party to the merger or interest exchange, 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 chapter, and was duly approved by the members in the manner required by this chapter and the articles of incorporation or bylaws.

5. 4. If the plan of merger or interest exchange was adopted by the board of directors without approval by the members of a domestic corporation that was a party to the merger or interest exchange, a statement that the plan of merger or interest exchange was duly approved by the vote of a majority of the board of directors in office, including the reason member approval was not required; and

6. 5. As to each foreign corporation or foreign eligible entity that was a party to the merger or interest exchange, a statement that the participation of the foreign corporation or foreign eligible entity was duly authorized as required by the its organic law of the corporation or eligible entity.

B. Articles of merger or interest exchange shall be ~~filed with~~ delivered to the Commission for filing by the survivor of the merger or the acquiring corporation in an interest exchange. If the Commission finds that the articles of merger or interest exchange comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger or interest exchange. Articles of merger or interest exchange

2788 filed under this section may be combined with any filing required under the organic law of any domestic  
 2789 eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section  
 2790 and the other organic law.

2791 **§ 13.1-897. Effect of merger or interest exchange.**

2792 A. When a merger becomes effective:

2793 1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the  
 2794 survivor continues or comes into existence as the case may be;

2795 2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the  
 2796 survivor ceases;

2797 3. ~~Property~~ *All property* owned by and, ~~except to the extent that assignment would violate a contractual~~  
 2798 ~~prohibition on assignment by operation of law,~~ every contract right possessed by each domestic or foreign  
 2799 corporation or eligible entity that merges into the survivor is vested in the survivor without *transfer*,  
 2800 reversion, or impairment;

2801 4. All ~~debts, obligations, and~~ liabilities of each domestic or foreign corporation or eligible entity that is  
 2802 merged into the survivor are ~~vested in~~ *debts, obligations, or liabilities* of the survivor;

2803 5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of  
 2804 any party to the merger whose separate existence ceased in the merger;

2805 6. ~~The~~ *If the survivor is a domestic corporation, the* articles of incorporation ~~or organic document and~~  
 2806 *bylaws* of the survivor ~~is~~ *are* amended to the extent provided in the plan of merger;

2807 7. The articles of incorporation ~~or organic document and~~ bylaws of a survivor that is a domestic  
 2808 corporation created by the merger ~~becomes~~ *become* effective; and

2809 8. The membership interests of each domestic or foreign corporation that is a party to the merger and the  
 2810 eligible interests in ~~an~~ *a* domestic or foreign eligible entity that is a party to the merger that are to be  
 2811 converted under the plan of merger into membership interests, *other securities*, eligible interests ~~or other~~  
 2812 ~~securities~~, obligations, rights to acquire membership interests, *other securities*, eligible interests ~~or other~~  
 2813 ~~securities~~, cash, other property, or any combination of the foregoing, are converted, and the former holders of  
 2814 such membership interests or eligible interests are entitled only to the rights provided to them in the plan of  
 2815 merger or to any rights they may have under the organic law ~~of the governing the foreign corporation or~~  
 2816 *domestic or foreign* eligible entity;

2817 9. *Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities*  
 2818 *of each entity that was a party to the merger, other than the survivor, are the rights, privileges, franchises,*  
 2819 *and immunities of the survivor; and*

2820 10. *If the survivor existed before the merger:*

2821 a. *All the property and contract rights of the survivor remain its property and contract rights without*  
 2822 *transfer, reversion, or impairment;*

2823 b. *The survivor remains subject to all its debts, obligations, and other liabilities; and*

2824 c. *Except as provided by law or the plan of merger, the survivor continues to hold all of its rights,*  
 2825 *privileges, franchises, and immunities.*

2826 B. ~~Upon a merger's becoming effective, a foreign corporation or a foreign eligible entity that is the~~  
 2827 ~~survivor of the merger is deemed to appoint the clerk of the Commission as its agent for service of process in~~  
 2828 ~~a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger.~~  
 2829 *When an interest exchange becomes effective, the membership interests or eligible interests in the acquired*  
 2830 *entity that are to be exchanged for membership interests and other securities, eligible interests, obligations,*  
 2831 *rights to acquire membership interests, other securities, eligible interests, cash, other property, or any*  
 2832 *combination of the foregoing, are entitled only to the rights provided to them in the plan of interest exchange*  
 2833 *or to any rights they may have under the organic law governing the acquired entity.*

2834 C. *Except as otherwise provided in the articles of incorporation or the bylaws of a domestic corporation*  
 2835 *or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible*  
 2836 *entity, the effect of a merger or interest exchange on interest holder liability is as follows:*

2837 1. *A person who becomes subject to a new interest holder liability in respect of an entity as a result of a*  
 2838 *merger or interest exchange shall have that new interest holder liability only in respect of interest holder*  
 2839 *liabilities that arise after the merger or interest exchange becomes effective.*

2840 2. *If a person had interest holder liability with respect to a party to the merger or the acquired entity*  
 2841 *before the merger or interest exchange becomes effective with respect to membership interests or eligible*  
 2842 *interests of such party or acquired entity that were (i) exchanged in the merger or interest exchange; (ii)*  
 2843 *were canceled in the merger; or (iii) the terms and conditions of which relating to interest holder liability*  
 2844 *were amended pursuant to the merger:*

2845 a. *The merger or interest exchange does not discharge that prior interest holder liability with respect to*  
 2846 *any interest holder liabilities that arose before the merger or interest exchange becomes effective.*

2847 b. *The provisions of the organic law governing any entity for which the person had that prior interest*  
 2848 *holder liability shall continue to apply to the collection or discharge of any interest holder liabilities*  
 2849 *preserved by subdivision a, as if the merger or interest exchange had not occurred.*

c. *The person shall have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subdivision a, as if the merger or interest exchange had not occurred.*

d. *The person shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the merger or interest exchange becomes effective.*

3. *If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same membership interests or eligible interests before and after the merger becomes effective, the merger has no effect on such interest holder liability.*

4. *An interest exchange has no effect on interest holder liability related to membership interests or eligible interests of the acquired entity that were not exchanged in the interest exchange.*

€ D. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States, or another country, shall also be a domestic corporation of the Commonwealth.

E. *Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of a 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.*

F. *Except as provided in the organic law governing a party to a merger or in its articles of incorporation, bylaws, or organic rules, the merger does not give rise to any rights that a third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up the affairs of that party and does not constitute or cause its dissolution, termination, or cancellation.*

G. *A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.*

H. *A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.*

#### **§ 13.1-897.1. Abandonment of a merger or interest exchange.**

A. Unless otherwise provided in ~~the~~ a plan of merger or interest exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or interest exchange is organized or by which it is governed, after a plan of merger or interest exchange has been adopted and approved as required by this article, and at any time before the certificate of merger or interest exchange has become effective, the plan may be abandoned by a domestic corporation that is a party to the plan without action by its members in accordance with any procedures set forth in the plan of merger or interest exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the plan of merger or interest exchange.

B. If a merger or interest exchange is abandoned after the articles of merger or interest exchange have been filed with the Commission but before the certificate of merger or interest exchange has become effective, in order for the certificate of merger or interest exchange to be ~~abandoned~~ canceled, all parties to the plan of merger or interest exchange shall sign a statement of abandonment and deliver it to the Commission for filing prior to the effective time and date of the certificate of merger or interest exchange. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the time and date the statement of abandonment was received by the Commission, and the merger shall be deemed abandoned and shall not become effective.

C. The statement of abandonment shall contain:

1. The name of each domestic and foreign corporation and eligible entity that is a party to the merger and its jurisdiction of formation and entity type;

2. When the survivor will be a domestic corporation or domestic stock corporation created by the merger, the name of the survivor set forth in the articles of merger;

3. The date on which the articles of merger or interest exchange were filed with the Commission;

4. The date and time on which the Commission's certificate of merger or interest exchange becomes effective; and

5. A statement that the merger or interest exchange is being abandoned in accordance with this section.

#### **§ 13.1-898.2. Domestication.**

A. ~~A By complying with the provisions of this article applicable to foreign corporations, a foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the domestication is permitted by the organic law of 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 By complying with the provisions of this article, 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 pursuant to a plan of domestication, if 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 is permitted by the organic law of the foreign corporation resulting from the domestication.

C. The plan of domestication shall set forth include:

1. A statement of the jurisdiction in which the corporation is to be domesticated The jurisdiction of formation and name of the domesticating corporation;

2. The name and jurisdiction of formation of the domesticated corporation;

3. The manner and basis of reclassifying the membership interests and any rights to membership interests of the domesticating corporation 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, if any;

4. If the domesticated corporation will be a domestic corporation, (i) the proposed amended and restated articles of incorporation of the domesticated corporation that satisfy the requirements of § 13.1-819, provided that provisions not required to be included in restated articles of incorporation may be omitted and (ii) the proposed bylaws of the domesticated corporation, which shall not be included with the articles of domestication delivered to the Commission for filing; and

5. The other 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 In addition to the requirements of subsection C, a plan of domestication may include any other provision relating to the domestication not prohibited by law.

E. The The terms of a 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 be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection K of § 13.1-804.

### § 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 to the members for their approval.

3. For a plan of domestication to be approved:

a. The In submitting the plan of domestication to the members for approval, the board of directors shall recommend the plan to that the members approve the plan unless the board of directors determines that because of conflict of interests or other special circumstances it should not make no such a recommendation and communicates, in which case the board of directors shall inform the members of the basis for its that determination to the members with the plan; and

b. The members shall approve the plan as provided in subdivision 6 of this subsection.

4. 3. The board of directors may condition its submission set conditions for approval of the plan of domestication to by the members on any basis or the effectiveness of the plan of domestication.

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.

4. If the approval of the members is to be sought at a members meeting, the corporation shall notify each member, regardless of whether or not entitled to vote, of the meeting of members at which the plan of domestication 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 of domestication and shall contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation and bylaws or other organic rules, as applicable, as they will be in effect immediately after the domestication.

6. 5. Unless this Act the articles of incorporation or bylaws provide otherwise, or the board of directors, acting pursuant to subdivision 4 of this subsection 3, requires a greater vote, approval of the plan of domestication shall be approved by each voting group requires (i) the approval of members entitled to vote on the plan at a meeting at which a quorum exists by more than two-thirds of all the votes entitled to be cast on the plan and (ii) except as provided in subdivision 6, the approval of each class of members entitled to vote on the plan voting as a separate voting group at the meeting at which a quorum of the voting group



exists consisting of more than two-thirds of the votes entitled to be cast on the plan by that voting group. The articles of incorporation or bylaws may provide for a greater or lesser vote than that provided for in this subdivision or a vote by separate voting groups section 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.~~

6. The articles of incorporation or the bylaws may expressly limit or eliminate the separate voting rights provided in clause (ii) of subdivision 5 as to any class of members, except when the articles of incorporation or the bylaws of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class to vote as a separate group under § 13.1-887 if it were a proposed amendment of the articles of incorporation or bylaws of the domestic domesticating corporation.

7. If as a result of a domestication one or more members of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication shall require the signing in connection with the domestication, by each such member, of a separate written consent to become subject to such interest holder liability, unless in the case of a member that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce such interest holder liability.

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 by the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

#### **§ 13.1-898.4. Articles of domestication; effectiveness.**

A. After the (i) a plan of domestication of a domestic corporation has been adopted and approved as required by this chapter or (ii) 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 that is the domesticating corporation has approved a domestication as required under its organic law, articles of domestication setting shall be signed in the name of the domesticating corporation. The articles shall set forth:

1. The name of the domesticating corporation and its jurisdiction of formation;  
2. The original 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, date of formation, jurisdiction of formation, and entity type of the domesticating corporation and its name, jurisdiction of formation, and entity type upon each subsequent domestication or conversion;

2- 3. 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. If the domesticating corporation is a domestic corporation:

a. The date the plan of domestication was approved;  
b. A statement that the plan of 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 was approved in accordance with this chapter;

c. 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 an agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

d. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision c; and

e. 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; and

5. If the domesticating corporation is a foreign corporation, a statement that the domestication is permitted by and was approved in accordance with the organic law of the foreign corporation.

B. The articles of domestication shall be delivered to the Commission for filing. 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.

3036 E. If the *domesticating corporation* is a foreign corporation ~~is authorized that has a certificate of authority~~  
 3037 to transact business in the Commonwealth under Article 14 (§ 13.1-919 et seq.), its certificate of authority  
 3038 shall be ~~canceled deemed withdrawn~~ automatically ~~on~~ when the domestication becomes effective ~~date of the~~  
 3039 certificate of domestication issued by the Commission.

3040 **§ 13.1-898.5. Amendment of plan of domestication; abandonment.**

3041 A. ~~Whenever a domestic corporation has adopted and approved, in the manner required by this article, a~~  
 3042 ~~plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction,~~  
 3043 ~~the corporation shall file with the Commission articles of incorporation surrender setting forth: A plan of~~  
 3044 ~~domestication of a domestic corporation may be amended:~~

3045 1. *In the same manner as the plan was approved, if the plan does not provide for the manner in which it*  
 3046 *may be amended; or*

3047 2. *In the manner provided in the plan, except that a member that was entitled to vote on or consent to*  
 3048 *approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:*

3049 a. *The amount or kind of membership interests or other securities, obligations, rights to acquire*  
 3050 *membership interests or other securities, cash, other property, or any combination of the foregoing, to be*  
 3051 *received by any of the members of the domesticating corporation under the plan;*

3052 b. *The articles of incorporation or bylaws of the domesticated corporation that will be in effect*  
 3053 *immediately after the domestication becomes effective, except for changes that do not require approval of the*  
 3054 *members of the domesticated corporation under its organic law or its proposed articles of incorporation or*  
 3055 *bylaws as set forth in the plan; or*

3056 c. *Any of the other terms or conditions of the plan, if the change would adversely affect the member in any*  
 3057 *material respect.*

3058 B. *Unless otherwise provided in the plan of domestication, after the plan of domestication has been*  
 3059 *adopted and approved by a domestic corporation as required by this article, and at any time before the*  
 3060 *certificate of domestication has become effective, the plan may be abandoned by the corporation without*  
 3061 *action by its members in accordance with any procedures set forth in the plan or, if no such procedures are*  
 3062 *set forth in the plan, in the manner determined by the board of directors.*

3063 C. *A domesticating corporation that is a foreign corporation may abandon its domestication to a domestic*  
 3064 *corporation in the manner prescribed by its organic law.*

3065 D. *If a domestication is abandoned after the articles of domestication have been filed with the*  
 3066 *Commission but before the certificate of domestication has become effective, a statement of abandonment*  
 3067 *signed by the domesticating corporation shall be delivered to the Commission for filing prior to the effective*  
 3068 *time and date of the certificate of domestication. If the Commission finds that the statement of abandonment*  
 3069 *complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and*  
 3070 *time the statement of abandonment was received by the Commission, and the domestication shall be deemed*  
 3071 *abandoned and shall not become effective.*

3072 E. *The statement of abandonment shall contain:*

3073 1. *The name of the domesticating corporation and its jurisdiction of formation;*

3074 2. ~~The jurisdiction in which the~~ *When the domesticating corporation is to be domesticated and a foreign*  
 3075 *corporation, the name of the domesticated corporation upon its set forth in the articles of domestication under*  
 3076 *the laws of that jurisdiction;*

3077 3. ~~The plan date on which the articles of domestication were filed with the Commission;~~

3078 4. *The date and time on which the Commission's certificate of domestication becomes effective; and*

3079 5. ~~A statement that the articles of incorporation surrender are being filed in connection with the~~  
 3080 ~~domestication of the is being abandoned in accordance with this section or, when the domesticating~~  
 3081 ~~corporation as is a foreign corporation to be incorporated under the laws of another jurisdiction and that the, a~~  
 3082 ~~statement that the foreign corporation is surrendering its charter under the laws of the Commonwealth;~~

3083 5. ~~Where the members of the corporation have voting rights, a statement:~~

3084 a. *That the plan was adopted by the unanimous consent of the members; or*

3085 b. *That the plan was submitted to the members by the board of directors in accordance with this Act; and a*  
 3086 *statement of:*

3087 (1) *The existence of a quorum of each voting group entitled to vote separately on the plan; and*

3088 (2) *Either the total number of votes east for and against the plan by each voting group entitled to vote*  
 3089 *separately on the plan or the total number of undisputed votes east for the plan separately by each voting*  
 3090 *group and a statement that the number east for the plan by each voting group was sufficient for approval by*  
 3091 *that voting group;*

3092 6. *Where the corporation has no members, or no members having voting rights, then a statement of that*  
 3093 *fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the*  
 3094 *fact that such plan received the vote of a majority of the directors in office;*

3095 7. *A statement that the corporation revokes the authority of its registered agent to accept service on its*  
 3096 *behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based*  
 3097 *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 abandoned the domestication as required by law.

**§ 13.1-898.5:1. Effect of domestication.**

A. When a domestication of a foreign corporation into a domestic corporation becomes effective:

1. All property owned by, and every contract right possessed by, the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

2. All debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and other liabilities of the domesticated corporation;

3. The name of the domesticated corporation may, but need not, be substituted for the name of the domesticating corporation in any pending proceeding;

4. The articles of incorporation and bylaws of the domesticated corporation become effective;

5. The membership interests of the domesticating corporation are reclassified into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other property in accordance with the terms of the domestication, and the members of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

6. The domesticated corporation is:

a. Incorporated under and subject to the organic law of the domesticated corporation;

b. The same corporation without interruption as the domesticating corporation; and

c. Deemed to have been incorporated on the date the domesticating corporation was originally incorporated.

B. When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is deemed to appoint the clerk of the Commission as an agent for service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the domestication.

C. Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a member in a foreign corporation that is domesticated into the Commonwealth who had interest holder liability in respect of such domesticating corporation before the domestication becomes effective shall be as follows:

1. The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

2. The provisions of the organic law of the domesticating corporation shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision 1, as if the domestication had not occurred.

3. The member shall have such rights of contribution from other persons as are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subdivision 1, as if the domestication had not occurred.

4. The member shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the domestication becomes effective.

D. A member who becomes subject to interest holder liability in respect of the domesticated corporation as a result of the domestication shall have such interest holder liability only in respect of interest holder liabilities that arise after the domestication becomes effective.

E. A domestication does not constitute or cause the dissolution of the domesticating corporation.

F. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

3160 G. A trust obligation that would govern property if transferred to the domesticating corporation applies to  
 3161 property that is transferred to the domesticated corporation after the domestication takes effect.

3162 Article 11.2.

3163 Conversions.

3164 **§ 13.1-898.8. Definitions.**

3165 As used in this article, unless the context requires a different meaning:

3166 "Conversion" means a transaction pursuant to this article.

3167 "Converted entity" means the converting entity as it continues in existence after a conversion.

3168 "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion  
 3169 pursuant to § 13.1-898.10 or the foreign eligible entity that approves a conversion pursuant to the organic  
 3170 law of the foreign eligible entity.

3171 **§ 13.1-898.9. Conversion.**

3172 A. By complying with this article, a domestic corporation may become (i) a domestic eligible entity or (ii)  
 3173 a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

3174 B. By complying with this article and applicable provisions of its organic law, a domestic eligible entity  
 3175 may become a domestic corporation. If procedures for the approval of a conversion are not provided by the  
 3176 organic law or organic rules of a domestic eligible entity, the conversion shall be adopted and approved in  
 3177 the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible  
 3178 entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion  
 3179 may nonetheless be adopted and approved by the unanimous consent of all the interest holders of such  
 3180 eligible entity. In either such case, the conversion thereafter may be effected as provided in the other  
 3181 provisions of this article, and for purposes of applying this article in such a case:

3182 1. The eligible entity, its members or interest holders, eligible interests, and organic rules taken together  
 3183 shall be deemed to be a domestic corporation, members, eligible interests, and articles of incorporation and  
 3184 bylaws, respectively and vice versa, as the context may require; and

3185 2. If the business and affairs of the eligible entity are managed by persons that are not identical to the  
 3186 members or interest holders, such persons shall be deemed to be the board of directors.

3187 C. By complying with the provisions of this article applicable to foreign entities, a foreign eligible entity  
 3188 may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a  
 3189 corporation in another jurisdiction and it has complied with said law in effecting the conversion.

3190 D. Unless otherwise provided for in Chapter 2.2 (§ 50-73.79 et seq.) of Title 50, a domestic partnership  
 3191 that has filed either a statement of partnership authority or a statement of registration as a registered limited  
 3192 liability partnership with the Commission that is not canceled may become a domestic corporation pursuant  
 3193 to a plan of conversion that is approved by the domestic partnership in accordance with the provisions of this  
 3194 article.

3195 **§ 13.1-898.10. Plan of conversion.**

3196 A. A domestic corporation may convert to a domestic or foreign eligible entity, or a domestic eligible  
 3197 entity may convert to a domestic corporation, under this article by approving a plan of conversion. The plan  
 3198 of conversion shall include:

3199 1. The name of the converting corporation;

3200 2. The name, jurisdiction of formation, and type of entity of the converted entity;

3201 3. The manner and basis of converting the membership interests and any rights to acquire membership  
 3202 interests of the domestic corporation into eligible interests or other securities, obligations, rights to acquire  
 3203 eligible interests or other securities, cash, other property, or any combination of the foregoing;

3204 4. If the converted entity will be a domestic corporation, (i) the proposed articles of incorporation of the  
 3205 converted entity that satisfy the requirements of § 13.1-819 and (ii) the proposed bylaws of the converted  
 3206 entity, which shall not be included with the articles of conversion delivered to the Commission for filing;

3207 5. If the converted entity will be a domestic eligible entity and a filing entity, the full text, as it will be in  
 3208 effect immediately after the conversion becomes effective, of the organic rules of the converted entity,  
 3209 including the public organic record that satisfies the requirements of § 13.1-619, 13.1-1101, 13.1-1212 or  
 3210 50-73.11, as the case may be, provided that the private organic rules shall not be included with the articles of  
 3211 conversion delivered to the Commission for filing;

3212 6. If the converted entity will be a foreign corporation or eligible entity, the plan of conversion may  
 3213 include the organic rules of the converted entity provided that the organic rules shall not be included with the  
 3214 articles of conversion delivered to the Commission for filing; and

3215 7. The other terms and conditions of the conversion.

3216 B. In addition to the requirements of subsection A, a plan of conversion may contain any other provision  
 3217 not prohibited by law.

3218 C. The terms of a plan of conversion may be made dependent upon facts objectively ascertainable outside  
 3219 the plan in accordance with subsection K of § 13.1-804.

3220 **§ 13.1-898.11. Action on plan of conversion.**

3221 A. A. In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the

3222 plan of conversion shall be adopted in the following manner:

3223 1. The plan of conversion shall first be adopted by board of directors.

3224 2. After adopting the plan of conversion, the board of directors shall submit the plan to the members  
3225 entitled to vote for their approval. In submitting the plan of conversion to the members for their approval, the  
3226 board of directors shall recommend that the members approve the plan unless the board of directors makes a  
3227 determination that because of conflicts of interest or other special circumstances it should not make such a  
3228 recommendation, in which case the board of directors shall inform the members of the basis for that  
3229 determination.

3230 3. The board of directors may set conditions for approval of the plan of conversion by the members or the  
3231 effectiveness of the plan of conversion.

3232 4. If the approval of the members is to be sought at a members meeting, the corporation shall notify each  
3233 member, regardless of whether entitled to vote, of the meeting of members at which the plan of conversion is  
3234 to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is  
3235 to consider the plan of conversion and shall contain or be accompanied by a copy or summary of the plan.  
3236 The notice shall include or be accompanied by a copy of the organic rules of the converted entity, which are  
3237 to be in writing as they will be in effect immediately after the conversion.

3238 5. Unless the articles of incorporation or the bylaws provide otherwise, or the board of directors, acting  
3239 pursuant to subdivision 3, requires a greater vote, approval of the plan of conversion requires (i) the  
3240 approval of the members entitled to vote at a meeting at which a quorum exists consisting of more than two-  
3241 thirds of the votes entitled to be cast on the plan and (ii) the approval of each class of members entitled to  
3242 vote voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting  
3243 of more than two-thirds of the votes entitled to be cast on the plan by that voting group. The articles of  
3244 incorporation or the bylaws may provide for a greater or lesser vote than that provided in this subsection or  
3245 a vote by separate voting groups so long as the vote provided for is not less than a majority of all votes cast  
3246 on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting  
3247 group exists.

3248 B. If as a result of the conversion one or more members of the converting domestic corporation would  
3249 become subject to interest holder liability, approval of the plan of conversion shall require the signing in  
3250 connection with the transaction, by each such member, of a separate written consent to become subject to  
3251 such interest holder liability.

3252 C. When a domestic corporation has no members, or no members having the right to vote, a plan of  
3253 conversion shall be adopted by the board of directors of such corporation.

3254 **§ 13.1-898.12. Articles of conversion; effectiveness.**

3255 A. After (i) a plan of conversion of a domestic corporation has been adopted and approved as required by  
3256 this article or (ii) a domestic or foreign eligible entity that is the converting entity has approved a conversion  
3257 as required under its organic law, articles of conversion shall be signed in the name of the converting entity.  
3258 The articles of conversion shall set forth:

3259 1. The name of the converting entity, its jurisdiction of formation, and entity type;

3260 2. The original name, date of formation, jurisdiction of formation, and entity type, of the converted entity  
3261 and its name, jurisdiction of formation, and entity type upon each subsequent domestication or conversion;

3262 3. If the converting entity is a domestic corporation:

3263 a. The plan of conversion;

3264 b. The date the plan of conversion was approved; and

3265 c. A statement that the plan of conversion was approved in accordance with this chapter;

3266 4. If the converted entity is a foreign eligible entity:

3267 a. A statement that the corporation revokes the authority of its registered agent to accept service on its  
3268 behalf and appoints the clerk of the Commission as an agent for service of process in any proceeding based  
3269 on a cause of action arising during the time it was incorporated in the Commonwealth;

3270 b. A mailing address to which the clerk may mail a copy of any process served on the clerk under  
3271 subdivision a; and

3272 c. A commitment by the converting entity to notify the clerk of the Commission in the future of any change  
3273 in its mailing address after the conversion becomes effective;

3274 5. If the converting entity is a foreign eligible entity and the converted entity is a domestic corporation, a  
3275 statement that the conversion is permitted by and was approved in accordance with the organic law of the  
3276 foreign eligible entity; and

3277 6. If the converting entity is a domestic stock corporation, limited partnership, partnership, or business  
3278 trust and the converted entity is a domestic corporation:

3279 a. The plan of conversion;

3280 b. The date the plan of conversion was approved; and

3281 c. A statement that the plan of conversion was approved in accordance with this chapter.

3282 B. The articles of conversion shall be delivered to the Commission for filing. If the Commission finds that  
3283 the articles of conversion comply with the requirements of law and that all required fees have been paid, it

3284 shall issue a certificate of conversion.

3285 C. Articles of conversion under this section may be combined with any required conversion filing under  
3286 the organic law of a domestic eligible entity or a foreign eligible entity that is authorized or registered to  
3287 transact business in the Commonwealth that is the converting entity or converted entity if the combined filing  
3288 satisfies the requirements of both this section and the other organic law.

3289 D. If the converting entity is a foreign eligible entity that is authorized or registered to transact business  
3290 in the Commonwealth, then its certificate of authority or registration shall be deemed withdrawn on the  
3291 effective date of its conversion.

3292 **§ 13.1-898.13. Amendment of plan of conversion; abandonment.**

3293 A. A plan of conversion of a converting entity that is a domestic corporation may be amended:

3294 1. In the same manner as the plan was approved, if the plan does not provide for the manner in which it  
3295 may be amended; or

3296 2. In the manner provided in the plan, except that members that were entitled to vote on or consent to  
3297 approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

3298 a. The amount or kind of eligible interests or other securities, obligations, rights to acquire eligible  
3299 interests or other securities, cash, other property, or any combination of the foregoing, to be received by any  
3300 of the members of the converting corporation under the plan;

3301 b. The organic rules of the converted entity that will be in effect immediately after the conversion becomes  
3302 effective, except for changes that do not require approval of the eligible interest holders of the converted  
3303 entity under its organic law or organic rules; or

3304 c. Any other terms or conditions of the plan, if the change would adversely affect such members in any  
3305 material respect.

3306 B. Unless otherwise provided in the plan of conversion, after the plan of conversion has been approved by  
3307 a converting entity that is a domestic corporation in the manner required by this article, and at any time  
3308 before the certificate of conversion has become effective, the plan may be abandoned by the corporation  
3309 without action by its members in accordance with any procedures set forth in the plan or, if no such  
3310 procedures are set forth in the plan, in the manner determined by the board of directors.

3311 C. If a conversion is abandoned after articles of conversion have been filed with the Commission but  
3312 before the certificate of conversion has become effective, a statement of abandonment shall be signed on  
3313 behalf of the converting domestic corporation or foreign eligible entity and delivered to the Commission for  
3314 filing prior to the effective time and date of the certificate of conversion. If the Commission finds that the  
3315 statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment,  
3316 effective as of the date and time the statement of abandonment was received by the Commission, and the  
3317 conversion shall be deemed abandoned and shall not become effective.

3318 D. The statement of abandonment shall contain:

3319 1. The name of the converting entity and its jurisdiction of formation and entity type;

3320 2. When the converting entity is a foreign eligible entity, the name of the converted entity set forth in the  
3321 articles of conversion;

3322 3. The date on which the articles of conversion were filed with the Commission;

3323 4. The date and time on which the Commission's certificate of conversion becomes effective; and

3324 5. A statement that the conversion is being abandoned in accordance with this section or, when the  
3325 converting corporation is a foreign eligible entity, a statement that the foreign eligible entity abandoned the  
3326 conversion as required by its organic law.

3327 **§ 13.1-898.14. Effect of conversion.**

3328 A. When a conversion becomes effective:

3329 1. All property owned by, and every contract right possessed by, the converting entity remains the  
3330 property and contract rights of the converted entity without reversion or impairment;

3331 2. All debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and  
3332 other liabilities of the converted entity;

3333 3. The name of the converted entity may, but need not, be substituted for the name of the converting entity  
3334 in any pending action or proceeding;

3335 4. If the converted entity is a filing entity or a domestic corporation or a domestic or foreign stock  
3336 corporation, its public organic record and its private organic rules become effective;

3337 5. If the converted entity is not a filing entity, its private organic rules become effective;

3338 6. If the converted entity is a registered limited liability partnership, the filing required to become a  
3339 registered limited liability partnership and its private organic rules become effective;

3340 7. The membership interests or eligible interests of the converting entity are reclassified into shares,  
3341 eligible interests, or other securities, obligations, rights to acquire shares, eligible interests or other  
3342 securities, cash, or other property in accordance with the terms of the conversion, and the members or  
3343 interest holders of the converting entity are entitled only to the rights provided to them by those terms and to  
3344 any appraisal rights they may have under the organic law of the converting entity;

3345 8. The converted entity is:

3346 a. Incorporated or organized under and subject to the organic law of the converted entity;  
 3347 b. The same entity without interruption as the converting entity; and  
 3348 c. Deemed to have been incorporated or otherwise organized on the date that the converting entity was  
 3349 originally incorporated, or organized;

3350 B. Except as otherwise provided in the articles of incorporation or the bylaws of a domestic corporation  
 3351 or the organic law or organic rules of a foreign corporation or a domestic or a foreign eligible entity, a  
 3352 member or eligible interest holder who becomes subject to interest holder liability in respect of a domestic  
 3353 corporation or eligible entity as a result of the conversion shall have such interest holder liability only in  
 3354 respect of interest holder liabilities that arise after the conversion becomes effective.

3355 C. Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest  
 3356 holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation  
 3357 who had interest holder liability in respect of such converting eligible entity before the conversion becomes  
 3358 effective shall be as follows:

3359 1. The conversion does not discharge that prior interest holder liability with respect to any interest holder  
 3360 liabilities that arose before the conversion became effective.

3361 2. The provisions of the organic law of the eligible entity shall continue to apply to the collection or  
 3362 discharge of any interest holder liabilities preserved by subdivision 1, as if the conversion had not occurred.

3363 3. The eligible interest holder shall have such rights of contribution from other persons as are provided by  
 3364 the organic law of the eligible entity with respect to any interest holder liabilities preserved by subdivision 1,  
 3365 as if the conversion had not occurred.

3366 4. The eligible interest holder shall not, by reason of such prior interest holder liability, have interest  
 3367 holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

3368 D. A conversion does not require the converting entity to wind up its affairs and does not constitute or  
 3369 cause the dissolution, termination, or cancellation of the entity.

3370 E. Upon a conversion becoming effective, a foreign corporation or foreign eligible entity that is the  
 3371 survivor of a conversion is deemed to appoint the clerk of the Commission as its agent for service of process  
 3372 in a proceeding to enforce the rights of members of each domestic corporation that is a party to the  
 3373 conversion.

3374 F. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,  
 3375 subscription, or conveyance that is made to the converting entity and that takes effect or remains payable  
 3376 after the conversion inures to the converted entity.

3377 G. A trust obligation that would govern property if transferred to the converting entity applies to property  
 3378 that is transferred to the converted entity after the conversion takes effect.

3379 **§ 13.1-899. Disposition of assets not requiring member approval.**

3380 Unless the articles of incorporation or bylaws provide otherwise, no approval of the members of a  
 3381 corporation entitled to vote is required:

3382 1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and  
 3383 regular course of business;

3384 2. To mortgage, pledge, or dedicate to the repayment of indebtedness, whether with or without recourse,  
 3385 or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of  
 3386 business; ~~or~~

3387 3. To transfer any or all of the corporation's assets to one or more domestic or foreign eligible entities all  
 3388 of whose ~~eligible~~ interests are owned by the corporation; or

3389 4. To sell, lease, exchange, or otherwise dispose of the corporation's assets otherwise than in the usual or  
 3390 regular course of business if the disposition would leave the corporation with an activity that for the  
 3391 corporation and its subsidiaries on a consolidated basis represented or was supported by at least 33 percent  
 3392 of total assets at the end of the most recently completed fiscal year.

3393 **§ 13.1-900. Member approval of certain dispositions.**

3394 A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its assets,  
 3395 with or without the good will, otherwise than in the usual and regular course of business, on the terms and  
 3396 conditions and for the consideration determined by the corporation's board of directors, if the board of  
 3397 directors adopts and its members approve the proposed transaction. ~~The sale, lease, exchange, or other~~  
 3398 ~~disposition of the corporation's assets other than a disposition described in § 13.1-899 requires approval of~~  
 3399 ~~the board of directors and the members having the right to vote, if any.~~

3400 B. Where there are members having voting rights, a disposition, other than a disposition described in  
 3401 § 13.1-899, shall be authorized in the following manner:

3402 1. The board of directors shall adopt a resolution authorizing the disposition. After adoption of such a  
 3403 resolution, the board of directors shall submit the proposed disposition to the members for their approval. The  
 3404 board of directors shall also submit to the members a recommendation that the members approve the  
 3405 proposed disposition, unless the board of directors makes a determination that because of conflicts of interest  
 3406 or other special circumstances it should not make such a recommendation, in which case the board of  
 3407 directors shall ~~transmit to~~ inform the members the basis for that determination.



3408 2. The board of directors may ~~condition its submission of the proposed transaction on any basis set~~  
 3409 ~~conditions for the approval of a disposition by the members or the effectiveness of the disposition.~~

3410 3. ~~The~~ If a disposition is required to be approved by the members and if the approval is to be sought at a  
 3411 members' meeting, the corporation shall notify each member, whether or not entitled to vote, of the ~~proposed~~  
 3412 members' meeting at which the disposition is to be submitted for approval in accordance with § 13.1-842.  
 3413 The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the  
 3414 disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which  
 3415 the disposition will be effected. If only a summary of the agreement is sent to members, the corporation shall  
 3416 also send a copy of the agreement to any member who requests it.

3417 4. Unless the articles of incorporation or bylaws provide otherwise, or the board of directors, acting  
 3418 pursuant to subdivision 2 of this subsection, requires a greater vote or a greater quorum, the approval of a  
 3419 disposition to be authorized shall be approved by more than two-thirds of all the votes cast on the disposition  
 3420 by the members shall require at a meeting at which a quorum exists the approval of more than two-thirds of  
 3421 all the votes entitled to be cast on the disposition. The articles of incorporation may provide for a greater or  
 3422 lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote  
 3423 provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to  
 3424 vote on the disposition at a meeting at which a quorum of the voting group exists.

3425 5. Unless the parties to the disposition have agreed otherwise, after a disposition of assets has been  
 3426 approved by members, and at any time before the disposition has been consummated, it may be abandoned  
 3427 without action by the members, subject to any contractual rights; ~~without further member action in~~  
 3428 ~~accordance with the procedure set forth in the resolution proposing of the parties to the disposition or, if none~~  
 3429 ~~is set forth, by the board of directors.~~

3430 C. For a transaction to be authorized where there are no members, or no members having voting rights,  
 3431 the proposed transaction shall be authorized upon receiving the vote of a majority of the directors in office.

3432 D. A disposition of assets in the course of dissolution under Article 13 (§ 13.1-902 et seq.) is not governed  
 3433 by this section.

3434 **§ 13.1-901.1. Dissolution; generally.**

3435 A corporation organized under this chapter is dissolved and its affairs shall be wound up upon the  
 3436 happening of the first to occur of the following events:

3437 1. At the time or on the happening of any events specified in writing in the articles of incorporation or  
 3438 bylaws;

3439 2. Dissolution by directors pursuant to § 13.1-903;

3440 3. Dissolution by directors and members pursuant to § 13.1-902;

3441 4. The entry of a decree of judicial dissolution under § 13.1-909;

3442 5. Automatic termination of its existence pursuant to § 13.1-914; or

3443 6. Involuntary termination of its existence pursuant to § 13.1-915.

3444 **§ 13.1-902. Dissolution by directors and members.**

3445 A. Where there are members having voting rights, ~~a corporation's~~ the board of directors may propose  
 3446 dissolution for submission to the members by first adopting a resolution authorizing the dissolution.

3447 B. For a proposal to dissolve to be ~~adopted~~ approved:

3448 1. The board of directors shall recommend dissolution to the members unless the board of directors  
 3449 determines that because of conflict of interests or other special circumstances it should make no  
 3450 recommendation and communicates, in which case the board of directors shall inform the members of the  
 3451 basis for its that determination to the members; and

3452 2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E.

3453 C. The board of directors may ~~condition its submission set conditions for the approval of the proposal for~~  
 3454 ~~dissolution on any basis by members or on the effectiveness of the dissolution.~~

3455 D. ~~The~~ If the approval of the members is to be sought at a members' meeting, the corporation shall notify  
 3456 each member, regardless of whether entitled to vote, of the ~~proposed members' meeting in accordance with~~  
 3457 ~~§ 13.1-842 of members at which dissolution will be submitted for approval.~~ The notice shall also state (i) that  
 3458 the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and (ii) how the  
 3459 assets of the corporation will be distributed after the corporation's creditors have been paid or how the  
 3460 distribution of assets will be determined.

3461 E. Unless the articles of the incorporation or bylaws provide otherwise, or the board of directors, acting  
 3462 pursuant to subsection C, requires a greater vote or greater quorum, or a vote by voting groups, dissolution to  
 3463 be authorized shall have been approved at a members' meeting at which a quorum exists by more than  
 3464 two-thirds of all the votes entitled to be cast on the proposal to dissolve at a meeting at which a quorum  
 3465 exists. The articles of incorporation or bylaws may provide for a greater or lesser vote than that provided for  
 3466 in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a  
 3467 majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at  
 3468 which a quorum of the voting group exists.

3469 **§ 13.1-904. Articles of dissolution.**



A. At any time after dissolution is ~~approved~~ *authorized*, the corporation may dissolve by ~~filing with~~ *delivering to* the Commission ~~for filing~~ articles of dissolution setting forth:

1. The name of the corporation.
2. *The date of its incorporation.*
3. The date *that* dissolution was authorized.
- ~~3-4.~~ 4. 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 east for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes east for dissolution separately by each voting group and a statement that the number east for dissolution by each voting group was sufficient for approval by that voting group and was approved by the members in the manner required by this article and the articles of incorporation and bylaws.~~

4. 5. Where there are no members, or no members having voting rights, then a statement of that fact, the date ~~of the meeting of on which~~ the board of directors ~~at which~~ *authorized* 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, ~~and delinquencies thereof~~, imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ 13.1-902 through 13.1-908.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective; ~~the term and~~ includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

#### **§ 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~~ *voting rights*, that authorization permitted revocation by action ~~by~~ *of* 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~~ *delivering to* the Commission ~~for filing~~ 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~~ *the* dissolution, *a statement to that effect and if dissolution was* authorized by the members, a statement that revocation was permitted by action ~~by~~ *of* 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~~ 4 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 *certificate of* revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the *certificate of* dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

#### **§ 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 *(i)* quorum or voting requirements for its board of directors or members; ~~change~~ *(ii)* provisions for selection, resignation, or removal of its directors or officers; or ~~change~~ *(iii)* 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.

**§ 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 ~~Aet~~ chapter 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; *and*

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations *or other eligible entities*, whether issuing shares or not, as may be specified in a plan of distribution adopted as provided in this ~~Aet~~ chapter or as a court may direct.

B. A plan providing for the distribution of assets, not inconsistent with the provisions of this ~~Aet~~ chapter, 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 ~~Aet~~ chapter 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.

**§ 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~~ delivered;

4. State the *claim* deadline, which may not be fewer than 120 days from the effective date of the written notice, by which *written* confirmation of the claim is required to be delivered to the dissolved corporation *and if the claimant's claim is not admitted, the proceeding deadline, which may not be fewer than 180 days from the effective date of the written notice, by which the claimant is required to commence a proceeding to enforce the claim*; 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 *claim* deadline *or, if the claim is not admitted, if the claimant does not commence a proceeding to enforce the claim by the proceeding 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 *claim* deadline; or

2. If the dissolved corporation delivered written notice to the claimant that ~~his~~ *the claimant's* 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 by the proceeding deadline~~.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B. *Nothing in this section shall prevent acceleration of liability for an unmatured claim or liability by operation of the agreement under which it was created or the exercise of any discretionary right of the claimant thereunder.*

E. If a liability exists but the full extent of any damages is *not* 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.

**§ 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). A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice shall (i) be published 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 or (ii) be posted conspicuously for at least 30 days on the dissolved corporation's website.~~ 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~~ delivered; 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~~ publication of the notice:

1. A claimant who was not given written notice under § 13.1-908; and

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.

#### **§ 13.1-908.2. Court proceedings.**

A. A dissolved corporation that has ~~published a~~ complied with the notice ~~under requirements of~~ § 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 (i) are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § 13.1-908.1. 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 known claimant ~~holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation covered by the application.~~

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The ~~reasonable fees and~~ expenses of such guardian, including all ~~reasonable~~ expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims ~~that do not meet the definition of a claim in subsection D of § 13.1-908 covered by that order,~~ and such claims may not be enforced against a member who received assets in liquidation.

#### **§ 13.1-908.3. Director duties.**

A. ~~The board of directors~~ Directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and, *unless otherwise provided in the articles of incorporation or bylaws*, make distributions in liquidation 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.

#### **§ 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 *members holding at least five percent of the voting power or a director*

3656 if it is established that:

3657 a. The directors are deadlocked in the management of the corporate affairs ~~and, the members are unable to~~  
3658 ~~break the deadlock, and~~ irreparable injury to the corporation is threatened or being suffered, or the business  
3659 and affairs of the corporation can no longer be conducted to the advantage of the members generally, because  
3660 of the deadlock, and either that the members are unable to break the deadlock or there are no members having  
3661 voting rights;

3662 b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is  
3663 illegal, oppressive, or fraudulent;

3664 c. The members are deadlocked in voting power and have failed, for a period that includes at least two  
3665 consecutive annual meeting dates, to elect successors to directors whose terms have expired;

3666 d. The corporate assets are being misapplied or wasted; or

3667 e. The corporation is unable to carry out its purposes;

3668 2. In a proceeding by a creditor if it is established that:

3669 a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied  
3670 and the corporation is insolvent; or

3671 b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is  
3672 insolvent;

3673 3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

3674 4. *In a proceeding by a member if the corporation has abandoned its business and has failed within a*  
3675 *reasonable time to liquidate and distribute its assets and terminate its corporate existence;*

3676 5. Upon application by the board of directors when it is established that circumstances make it impossible  
3677 to obtain a representative vote by members on the question of dissolution and that the continuation of the  
3678 business of the corporation is not in the interest of the members but it is in their interest that the assets and  
3679 business be liquidated; or

3680 ~~5- 6.~~ When the Commission has instituted a proceeding for the involuntary termination of a corporate  
3681 existence and entered an order finding that the corporate existence of the corporation should be terminated  
3682 but that liquidation of its business and affairs should precede the entry of an order of termination of corporate  
3683 existence.

3684 B. The circuit court in the city or county named in subsection C shall have full power to liquidate the  
3685 assets and business of the corporation at any time after the termination of corporate existence, pursuant to the  
3686 provisions of this article upon the application of any person, for good cause, with regard to any assets or  
3687 business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court  
3688 in any city or county where any property may be situated whether of a domestic or a foreign corporation that  
3689 ceased to exist.

3690 C. Venue for a proceeding brought under this section lies in the city or county where the corporation's  
3691 principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was  
3692 last located.

3693 D. It is not necessary to make directors or members parties to a proceeding to be brought under this  
3694 section unless relief is sought against them individually.

3695 E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or  
3696 custodian pendente lite with such powers and duties as the court may direct, take other action required to  
3697 preserve the corporate assets wherever located, and carry on the business of the corporation until a full  
3698 hearing can be held.

3699 **§ 13.1-910. Receivership or custodianship.**

3700 A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to  
3701 wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business  
3702 and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and  
3703 any interested persons designated by the court, before appointing a receiver or custodian. The court  
3704 appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property  
3705 wherever located.

3706 B. The court may appoint *as a receiver or custodian* an individual, a domestic corporation *or eligible*  
3707 *entity*, or a foreign corporation; *or eligible entity* authorized to transact business in the Commonwealth; ~~as a~~  
3708 ~~receiver or custodian~~. The court may require the receiver or custodian to post bond, with or without sureties,  
3709 in an amount the court directs.

3710 C. The court shall describe the powers and duties of the receiver or custodian in its appointing order,  
3711 which may be amended from time to time. Among other powers:

3712 1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located; at a  
3713 public or private sale; ~~if authorized by the court~~; and (ii) may sue and defend in ~~his~~ *such receiver's* own name  
3714 as receiver of the corporation in all courts of the Commonwealth; and

3715 2. The custodian may exercise all of the powers of the corporation, through or in place of its board of  
3716 directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its  
3717 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~~ *expenses paid or reimbursed* to the receiver or custodian ~~and the custodian's counsel~~ from the assets of the corporation or proceeds from the sale of the assets.

**§ 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~~ *deliver to the Commission for filing* articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. *The date of its incorporation.*
3. That all the assets of the corporation have been distributed *to its creditors and, unless otherwise provided in the articles of incorporation or bylaws, to its members, if any;* and
- ~~3-4.~~ 4. That the dissolution of the corporation has not been revoked.

B. ~~With the articles of termination of corporate existence, the corporation shall file a statement certifying that the corporation has filed required returns and has paid all required state taxes to the time of the statement. In contemplation of submitting the required statement, the corporation may file returns and pay taxes before such returns and taxes would otherwise be due.~~

C. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. ~~Upon the issuance of such~~ *When the certificate is effective*, 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~~ *chapter*.

~~C- D.~~ D. 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 § 55.1-2513, pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55.1-2524 except subdivision B 4 of that section.

**§ 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, *a majority of 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. *The date of its incorporation;*
3. That the corporation has not commenced business;
- ~~3-4.~~ 4. That no debt of the corporation remains unpaid;
- ~~4-5.~~ 5. That the net assets of the corporation remaining after winding up have been distributed; and
- ~~5-6.~~ 6. That a majority of the initial directors authorized the dissolution or that initial directors were not

named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

**§ 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) *sell, convey, and dispose of its properties that are not to be distributed in kind, if any;* (iii) pay, satisfy, and discharge its liabilities and obligations; and ~~(iii)~~ (iv) do all

3780 other acts required to liquidate its business and affairs. After paying or adequately providing for the payment  
3781 of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § §§ 13.1-907  
3782 and 13.1-912.

3783 D. No officer, director, or agent of a corporation shall have any personal obligation for any of the  
3784 liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of  
3785 the termination of the corporation's existence pursuant to this section.

3786 **§ 13.1-915. Involuntary termination of corporate existence.**

3787 A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission  
3788 when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law;  
3789 (ii) has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;  
3790 (iii) has failed to file any document required by this ~~Act~~ chapter to be filed with the Commission; or (iv) has  
3791 been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors  
3792 constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination,  
3793 the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation.  
3794 The trustees then shall proceed to collect the assets of the corporation; *sell, convey, and dispose of such*  
3795 *properties that are not to be distributed in kind, if any;* and pay, satisfy and discharge its liabilities and  
3796 obligations and do all other acts required to liquidate its business and affairs. After paying or adequately  
3797 providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in  
3798 accordance with § 13.1-907. A corporation whose existence is terminated pursuant to clause (iv) shall not be  
3799 eligible for reinstatement for a period of not less than one year.

3800 B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report  
3801 such conviction to the Commission and file with the Commission an authenticated copy of the judgment or  
3802 record of conviction.

3803 C. Before entering any such order the Commission shall issue a rule against the corporation giving it an  
3804 opportunity to be heard and show cause why such an order should not be entered. The Commission may issue  
3805 the rule on its own motion or on motion of the Attorney General.

3806 **§ 13.1-916. Reinstatement of a corporation that has ceased to exist.**

3807 A. A corporation that has ceased to exist ~~pursuant to this article~~ may apply to the Commission for  
3808 reinstatement within five years thereafter unless the corporate existence was terminated by order of the  
3809 Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred  
3810 upon it by law or (ii) entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution  
3811 contains no provision ~~of~~ for reinstatement of corporate existence.

3812 B. To have its corporate existence reinstated, the corporation shall provide the Commission with the  
3813 following:

3814 1. An application for reinstatement, which shall include the identification number issued by the  
3815 Commission to the corporation, and which may be in the form of a letter signed by an officer or director of  
3816 the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after  
3817 diligent search by such agent, no officer or director can be found;

3818 2. A reinstatement fee of ~~\$10~~ \$100;

3819 3. All annual registration fees and penalties that were due before the corporation ceased to exist and that  
3820 would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been  
3821 terminated;

3822 4. An annual report for the calendar year that corresponds to the calendar year of the latest annual  
3823 registration fee that was assessed or that would have been assessed to the date of reinstatement;

3824 5. If the name of the corporation does not comply with the provisions of § 13.1-829 at the time of  
3825 reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a  
3826 name that satisfies the provisions of § 13.1-829, with the fee required by this chapter for the filing of articles  
3827 of amendment; and

3828 6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has  
3829 not been appointed, a statement of change pursuant to § 13.1-834.

3830 C. If the corporation complies with the provisions of this section, the Commission shall enter an order of  
3831 reinstatement of corporate existence. Upon entry of the order of reinstatement, the corporate existence shall  
3832 be deemed to have continued from the date of termination as if *the* termination had never occurred, and any  
3833 liability incurred by the corporation or a director, officer, or other agent after the termination and before the  
3834 reinstatement is determined as if the termination of the corporation's existence had never occurred.

3835 **§ 13.1-917. Survival of remedy after termination of corporate existence.**

3836 The termination of corporate existence shall not take away or impair any remedy available to or against  
3837 the corporation; *or* its directors, officers, or members, for any right or claim existing, or any liability incurred,  
3838 prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or  
3839 defended by the corporation in its corporate name. The members, directors, and officers shall have power to  
3840 take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

3841 *Article 13.1.*

*Charitable Corporations and Other Entities with a Charitable Purpose.*

**§ 13.1-918.1. Effect of any fundamental transaction.**

A. Property held in trust or otherwise dedicated to a charitable purpose shall not be diverted from its trust or charitable purpose by any fundamental transaction except in compliance with the laws of the Commonwealth on cy pres or otherwise dealing with the non-diversion of charitable assets.

B. A person that is a member or is otherwise affiliated with a charitable corporation or other entity with a charitable purpose shall not receive a direct or indirect financial benefit in connection with a fundamental transaction unless the person is itself a charitable corporation or any other entity with a charitable purpose. This subsection does not apply to receipt of reasonable compensation for services rendered.

C. A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a fundamental transaction to or for a charitable corporation or other entity with a charitable purpose that is the subject of the fundamental transaction, inures to the entity as it continues in existence after the transaction if it is a charitable corporation or other entity with a charitable purpose, subject to the express terms of the will or other instrument.

**§ 13.1-918.2. Authority of the Attorney General.**

Nothing in this article shall affect the authority of the Attorney General regarding charitable assets under § 2.2-507.1.

**§ 13.1-919. Authority to transact business required.**

A. A foreign corporation ~~may~~ shall 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, *mediating*, *arbitrating*, 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 *in financial institutions*;
4. Selling through independent contractors;
5. Soliciting or obtaining orders; ~~whether by mail or through employees or agents or otherwise~~, by any means if the orders require acceptance outside the Commonwealth before they become contracts;
6. Creating or acquiring indebtedness, deeds of trust, ~~and~~ or security interests in ~~real or personal~~ property;
7. Securing or collecting debts or enforcing deeds of trust ~~and~~ or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;
8. Owning, ~~without more~~, ~~real or personal~~ protecting, and maintaining property;
9. Conducting an isolated transaction that is completed within 30 consecutive days and that is not one in the course of ~~repeated similar~~ 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~~ that 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 *or a manager of a domestic or foreign limited liability company* that does not otherwise transact business in the Commonwealth; *or*
12. *Transacting business in interstate commerce.*

C. The list of activities in subsection B is not exhaustive.

D. This section shall not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of the Commonwealth other than this chapter.

E. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

**§ 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.

3904 D. If a foreign corporation transacts business in the Commonwealth without a certificate of authority, each  
 3905 officer, director, and employee who does any of such business in the Commonwealth knowing that a  
 3906 certificate of authority is required shall be liable for a penalty of not less than \$500 and not more than \$5,000.  
 3907 Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an  
 3908 action against the corporation may lie, after the corporation and the individual have been given notice and an  
 3909 opportunity to be heard.

3910 E. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in the  
 3911 Commonwealth without a certificate of authority by serving process on any director, officer or agent of the  
 3912 corporation doing such business, or, if none can be found, on the clerk of the Commission or on the  
 3913 corporation in any other manner permitted by law. If any foreign corporation transacts business in the  
 3914 Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have  
 3915 thereby appointed the clerk of the Commission ~~its attorney~~ *an agent* for service of process *upon the foreign*  
 3916 *corporation*. Service upon the clerk shall be made in accordance with § 12.1-19.1.

3917 **§ 13.1-921. Application for certificate of authority.**

3918 A. ~~A foreign corporation may apply to the Commission for~~ *To obtain* a certificate of authority to transact  
 3919 business in the Commonwealth, ~~a foreign corporation shall deliver an application to the Commission.~~ The  
 3920 application shall be made on ~~forms~~ *a form* prescribed and furnished by the Commission. The application shall  
 3921 *be signed in the name of the foreign corporation and* set forth:

3922 1. The name of the foreign corporation, and if the *foreign* corporation is prevented by § 13.1-924 from  
 3923 using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of  
 3924 § 13.1-924;

3925 2. The foreign corporation's jurisdiction of formation, and if the foreign corporation was previously  
 3926 authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability  
 3927 company, business trust, limited partnership, or registered limited liability partnership, with respect to every  
 3928 such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other  
 3929 jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it  
 3930 by the Commission;

3931 3. The foreign corporation's original date of incorporation, organization, or formation as an entity and its  
 3932 period of duration;

3933 4. The street address of the foreign corporation's principal office;

3934 5. The address of the proposed registered office of the foreign corporation in the Commonwealth,  
 3935 including both (i) the post office address with street and number, if any, and (ii) the name of the county or  
 3936 city in which it is located, and the name of its proposed registered agent in the Commonwealth at such  
 3937 address and that the registered agent is either (a) an individual who is a resident of Virginia and either an  
 3938 officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock  
 3939 or nonstock corporation, limited liability company, or registered limited liability partnership authorized to  
 3940 transact business in the Commonwealth, the business office of which is identical with the registered office;  
 3941 and

3942 6. The names and ~~usual~~ business addresses of the ~~current~~ *foreign corporation's* directors and principal  
 3943 ~~officers of the foreign corporation.~~

3944 B. The foreign corporation shall deliver with the completed application a copy of its articles of  
 3945 incorporation and all amendments ~~and corrections~~ thereto, duly authenticated by the Secretary of State or  
 3946 other official having custody of corporate records in its jurisdiction of formation.

3947 C. A foreign corporation is not precluded from receiving a certificate of authority to transact business in  
 3948 the Commonwealth because of any difference between the law of the foreign corporation's jurisdiction of  
 3949 formation and the law of the Commonwealth.

3950 D. If the Commission finds that the application complies with the requirements of law and that all  
 3951 required fees have been paid, it shall issue a certificate of authority to transact business in the  
 3952 Commonwealth.

3953 **§ 13.1-922. Amended certificate of authority.**

3954 A. A foreign corporation authorized to transact business in the Commonwealth shall obtain an amended  
 3955 certificate of authority from the Commission *if it*:

3956 1. ~~If it changes~~ *Changes* its corporate name ~~or in the state or other jurisdiction of its incorporation~~  
 3957 *formation; or*

3958 2. *Changes its jurisdiction of formation; or*

3959 ~~To abandon or change~~ 3. *Abandons or changes* the designated name adopted by the *foreign* corporation  
 3960 for use in the Commonwealth pursuant to subsection B of § 13.1-924.

3961 B. The requirements of § 13.1-921 for obtaining an original certificate of authority apply to obtaining an  
 3962 amended certificate under this section.

3963 C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in  
 3964 the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign  
 3965 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 of formation.

**§ 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~~ chapter.

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~~ the foreign corporation 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~~ chapter does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth.

**§ 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; and

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in 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 foreign corporation at its last known address any process, notice or demand that is served on the registered agent.

**§ 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 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 § 13.1-925.

B. A statement of change shall ~~forthwith~~ be filed with the Commission by a foreign corporation ~~whenever~~ if 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 county or city in which the registered office is located changes or is incorrect on the Commission's records, or (iii) 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 with 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 with the Commission.

**§ 13.1-927. Resignation of registered agent of foreign corporation.**

A. A registered agent of a foreign corporation may resign the agency appointment as agent for the corporation by signing and filing with the Commission a statement of resignation stating (i) the name of the foreign corporation, (ii) the name of the agent, and (iii) that the agent resigns from serving as registered agent for the foreign corporation. The statement of resignation shall be accompanied by a certification that the registered agent will have a copy of the statement mailed to the principal office of the foreign corporation by certified mail on or before the business day following the day on which the statement is filed. When the statement of resignation takes effect, the registered office is also discontinued.

B. A statement of resignation takes effect on the earlier of (i) 12:01 a.m. on the thirty-first day after the

4028 date on which the statement was filed with the Commission or (ii) the date on which a statement of change to  
 4029 appoint a registered agent is filed, in accordance with § 13.1-926, with the Commission.

4030 **§ 13.1-928. Service of process on foreign corporation.**

4031 A. The registered agent of a foreign corporation authorized to transact business in the Commonwealth  
 4032 shall be an agent of such *foreign* corporation upon whom any process, notice, order or demand required or  
 4033 permitted by law to be served upon the corporation may be served. The registered agent may by instrument in  
 4034 writing, acknowledged before a notary public, designate a natural person or persons in the office of the  
 4035 registered agent upon whom any such process, notice, order or demand may be served. Whenever any such  
 4036 person accepts service of process, a photographic copy of such instrument shall be attached to the return.

4037 B. Whenever a foreign corporation authorized to transact business in the Commonwealth fails to appoint  
 4038 or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable  
 4039 diligence be found at the registered office, then the clerk of the Commission shall be an agent of the *foreign*  
 4040 corporation upon whom service may be made in accordance with § 12.1-19.1.

4041 C. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand,  
 4042 required or permitted by law to be served upon a *foreign* corporation in any other manner now or hereafter  
 4043 permitted by law.

4044 **§ 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth.**

4045 A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a  
 4046 merger permitted by the laws of the state or other its jurisdiction under whose laws it is incorporated of  
 4047 formation, and such *foreign* corporation is the surviving entity of the merger, it shall, within 30 days after  
 4048 such merger becomes effective, file with the Commission a copy of the instrument of merger duly  
 4049 authenticated by the Secretary of State or other official having custody of corporate records in the state or  
 4050 other its jurisdiction under whose law it is incorporated of formation; however, the filing shall not be required  
 4051 when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's  
 4052 articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the  
 4053 domestic corporation pursuant to § 13.1-896 contain a statement that the merger is permitted under the laws  
 4054 of the state or other jurisdiction in which the foreign corporation is incorporated and that participation of the  
 4055 foreign corporation has complied with that law in effecting the merger was duly authorized as required by its  
 4056 organic law.

4057 B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a  
 4058 merger permitted by the laws of the state or other its jurisdiction under the laws of which it is incorporated of  
 4059 formation, and such corporation is not the surviving entity of the merger or, whenever such a foreign  
 4060 corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign  
 4061 corporation; limited liability company, business trust, partnership, or limited partnership or eligible entity, if  
 4062 there is one, shall, if not continuing to transact business in the Commonwealth, within 30 days after such  
 4063 merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or  
 4064 consolidation duly authenticated by the Secretary of State or other official having custody of corporate  
 4065 records in the state or other foreign corporation's jurisdiction under whose law it was incorporated of  
 4066 formation and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If a  
 4067 However, if the surviving or resulting foreign corporation or limited liability company, business trust,  
 4068 partnership, or limited partnership eligible entity is to continue to transact business in the Commonwealth and  
 4069 has not received obtained a certificate of authority or certificate of registration to transact business in the  
 4070 Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate  
 4071 of authority or certificate of registration to transact business in the Commonwealth; together with a duly  
 4072 authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its  
 4073 articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other  
 4074 official having custody of corporate records in the state or country under whose laws it is incorporated  
 4075 pursuant to and in compliance with § 13.1-759, 13.1-921, 13.1-1052, 13.1-1242, 50-73.54, or 50-73.138, as  
 4076 applicable.

4077 C. Upon the merger or consolidation of two a foreign corporation with one or more foreign corporations  
 4078 any one of which owns or eligible entities, all property in the Commonwealth; all such property shall pass to  
 4079 the surviving or resulting corporation or eligible entity except as otherwise provided by the laws of the state  
 4080 by which it is governed its jurisdiction of formation, but only from the time when a duly authenticated copy  
 4081 of the instrument of merger or consolidation is filed with the Commission.

4082 **§ 13.1-928.2. Entity conversion of foreign corporation authorized to transact business in**  
 4083 **Commonwealth.**

4084 A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts  
 4085 to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion  
 4086 becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated  
 4087 by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction  
 4088 under whose laws such entity conversion was effected; and

4089 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 its jurisdiction by which it is governed of formation~~, but only from and after the time when a duly authenticated copy of the instrument of ~~entity~~ conversion is filed with the Commission.

**§ 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 its~~ certificate of ~~withdrawal from the Commission~~.

~~B. A foreign corporation authorized to transact business in the Commonwealth may apply authority by applying 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 its jurisdiction under whose laws it is incorporated of formation;~~

2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of ~~the state or other its jurisdiction under whose law it was incorporated of formation~~ 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 its jurisdiction under whose law it was incorporated of formation;~~

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 an~~ agent for service of process ~~upon the foreign corporation~~ 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. B.~~ The Commission shall not allow any foreign corporation to withdraw ~~from the Commonwealth its certificate of authority~~ 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 statement~~ 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. C.~~ 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 jurisdiction of its incorporation formation.~~

~~E. D.~~ Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn ~~its certificate of authority~~ 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.

**§ 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

4152 fee due date each year, such foreign corporation shall automatically cease to be authorized to transact  
 4153 business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

4154 B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual  
 4155 registration fee required by law on or before the foreign corporation's annual registration fee due date  
 4156 determined in accordance with subsection A of § 13.1-936.1 of each year.

4157 C. If any foreign corporation whose registered agent has filed with the Commission ~~his~~ a statement of  
 4158 resignation pursuant to § 13.1-927 fails to file a statement of change pursuant to § 13.1-926 within 31 days  
 4159 after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign  
 4160 corporation of impending revocation of its certificate of authority. If the foreign corporation fails to file the  
 4161 statement of change before the last day of the second month immediately following the month in which the  
 4162 impending revocation notice was mailed, the foreign corporation shall automatically cease to be authorized to  
 4163 transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of  
 4164 that day.

4165 D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section  
 4166 constitutes the appointment of the clerk of the Commission as ~~the foreign corporation's~~ an agent for service of  
 4167 process ~~upon the foreign corporation~~ in any proceeding based on a cause of action arising during the time the  
 4168 foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk  
 4169 of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk  
 4170 in accordance with § 12.1-19.1.

4171 E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate  
 4172 the authority of the registered agent of the corporation.

4173 **§ 13.1-931. Involuntary revocation of certificate of authority.**

4174 A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may  
 4175 be revoked by order of the Commission when it finds that ~~the~~ such foreign corporation:

4176 1. Has continued to exceed the authority conferred upon it by law;  
 4177 2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by  
 4178 law;

4179 3. Has failed to file any document required by this ~~Act~~ chapter to be filed with the Commission;

4180 4. No longer exists under the laws of the ~~state or country~~ jurisdiction of its ~~incorporation~~ formation; or

4181 5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and  
 4182 directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

4183 A certificate of authority revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a  
 4184 period of not less than one year.

4185 B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report  
 4186 such conviction to the Commission and file with the Commission an authenticated copy of the judgment or  
 4187 record of conviction.

4188 C. Before entering ~~any such~~ an order ~~revoking the certificate of authority of a foreign corporation under~~  
 4189 subsection A, the Commission shall issue a rule against the foreign corporation giving it an opportunity to be  
 4190 heard and show cause why such an order should not be entered. The Commission may issue the rule on its  
 4191 own motion or on motion of the Attorney General.

4192 D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date  
 4193 shown on the order revoking its certificate of authority.

4194 E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the  
 4195 Commission the foreign corporation's agent for service of process in any proceeding based on a cause of  
 4196 action arising during the time the foreign corporation was authorized to transact business in the  
 4197 Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the  
 4198 foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

4199 F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the  
 4200 registered agent of the corporation.

4201 **§ 13.1-931.1. Reinstatement of foreign corporation whose certificate of authority has been**  
 4202 **withdrawn or revoked.**

4203 A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has  
 4204 been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of  
 4205 authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the  
 4206 certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § 13.1-931.

4207 B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with  
 4208 the following:

4209 1. An application for reinstatement, which shall include the identification number issued by the  
 4210 Commission to the corporation, and which may be in the form of a letter signed by an officer or director of  
 4211 the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after  
 4212 diligent search by such agent, no officer or director can be found;

4213 2. A reinstatement fee of ~~\$40~~ \$100;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any ~~mergers~~ *merger, conversion, or domestication transaction* 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 any such amendment or a~~ *a*, correction, or transaction 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.

#### § 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 in a form that permits preparation of its financial statements.*

C. ~~A If the corporation or its agent has members, it shall maintain a record of its current 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. Nothing in this subsection shall require the corporation to maintain, include in such record, or distribute to its members the electronic mail address or other electronic contact information of any member.~~

D. A corporation shall maintain ~~its the records in written form provided for in subsections C and E and subsection B of § 13.1-933 in the form of a document, including an electronic record or in another form~~ *capable of conversion into written paper form within a reasonable time.*

E. A corporation shall ~~keep a copy of~~ *maintain* the following records:

1. ~~Its articles or restated A copy of its articles of incorporation; all amendments to them as currently in effect, and any notices to members referred to in subdivision L K 5 of § 13.1-804 regarding specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in subdivision K 5 of 13.1-804;~~

2. ~~Its bylaws or restated bylaws and all amendments to them as currently in effect;~~

3. ~~Resolutions~~ *If the corporation has members, resolutions* adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;

4. ~~The~~ *If the corporation has members, the* minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

5. ~~All~~ *If the corporation has members, 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~~ *A copy of its* most recent annual report ~~delivered to~~ *filed with* the Commission under § 13.1-936.

#### § 13.1-933. Inspection of records by members.

A. Subject to subsection ~~E~~ *D* 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 the member delivers a signed~~ *he gives the corporation the member delivers a signed* written notice ~~of his to the corporation's secretary of his~~ *of his to the corporation's secretary of his* demand at least ~~five~~ *10* 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 delivers a signed~~ *gives the corporation delivers a signed* written notice ~~of his to the corporation's secretary of the member's~~ *of his to the corporation's secretary of the member's* demand at least ~~five~~ *10* business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of, ~~or records of any actions taken without meeting by,~~ *or records of any actions taken without meeting by,* the board of directors; ~~records of any action of or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation; minutes of any meeting of the members; and records of action~~

4276 taken by the members or board of directors without a meeting, to the extent not subject to inspection under  
4277 subsection A;

4278 2. Accounting records of the corporation ledgers and related work papers used in the preparation of the  
4279 corporation's most recent annual financial statements; and

4280 3. The record of members maintained in accordance with subsection C of § 13.1-932.

4281 C. A member may inspect and copy the records identified described in subsection B only if:

4282 1. ~~He~~ The member has been a member of record for at least six months immediately preceding ~~his~~ such  
4283 member's demand;

4284 2. ~~His~~ The member's demand is made in good faith and for a proper purpose;

4285 3. ~~He~~ The member's demand describes with reasonable particularity ~~his~~ such member's purpose and the  
4286 records that ~~he~~ such member desires to inspect and copy; and

4287 4. The records are directly connected with ~~his~~ the member's purpose.

4288 D. The corporation may enforce reasonable restrictions on the confidentiality, use, or distribution of  
4289 records described in subsection B.

4290 E. The right of inspection granted by this section ~~may~~ shall not be abolished or limited by a corporation's  
4291 articles of incorporation or bylaws.

4292 ~~E.~~ F. This section does not affect:

4293 1. The right of a member to inspect records under § 13.1-845 or, if the member is in litigation with the  
4294 corporation, to the same extent as any other litigant; or

4295 2. The power of a court, independently of this ~~Act~~ chapter, to compel the production of corporate such  
4296 records for examination as the court shall order after finding that the member has established that the  
4297 member has satisfied the requirements of subsection C and that (i) the records that the member seeks are  
4298 material to the protection of the member's rights as a member and (ii) the disclosure of the records will not  
4299 adversely affect the corporation's interest.

4300 G. Without consent of the board of directors, a membership list or any part thereof shall not be obtained  
4301 or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the  
4302 generality of the foregoing, without the consent of the board a membership list or any part thereof shall not  
4303 be:

4304 1. Used to solicit money or property unless the money or property will be used solely to solicit the votes of  
4305 the members in an election to be held by the corporation;

4306 2. Used for any commercial purpose; or

4307 3. Sold to or purchased by any person.

4308 **§ 13.1-934. Scope of inspection right.**

4309 A. A ~~member's~~ member may appoint an agent or attorney ~~has~~ to exercise the ~~same~~ member's inspection  
4310 and copying rights as the member he represents under § 13.1-933.

4311 B. The corporation may satisfy the right of a member to copy records under ~~§ 13.1-933~~ includes, if  
4312 reasonable, the right to receive by furnishing the member copies by xerographic photocopy or other means  
4313 chosen by the corporation, including furnishing copies through an electronic transmission if available and so  
4314 requested by the member.

4315 C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies  
4316 of any documents provided to the member. The charge may not exceed the estimated cost of production,  
4317 reproduction, and transmission of the records.

4318 ~~D.~~ The corporation may comply with a member's demand to inspect the record of members under  
4319 subdivision B 3 of § 13.1-933 by providing the member with a list of its members that was compiled no  
4320 earlier than the date of delivery of the member's demand.

4321 D. The corporation may impose a reasonable charge to cover the costs of providing copies of documents  
4322 to the member, which may be based on an estimate of such costs.

4323 **§ 13.1-935. Court-ordered inspection.**

4324 A. If a corporation does not allow a member who complies with subsection A of § 13.1-933 to inspect and  
4325 copy any records required by that subsection to be available for inspection, the circuit court in the city or  
4326 county where the corporation's principal office is located, or, if none in this Commonwealth, where its  
4327 registered office is located, may summarily order inspection and copying of the records demanded at the  
4328 corporation's expense upon application of the member.

4329 B. If a corporation does not within a reasonable time allow a member to inspect and copy any other  
4330 record, the member who complies with subsections B and C of § 13.1-933 to inspect and copy the records  
4331 required by subsection B of § 13.1-933, the member may apply to the circuit court in the city or county where  
4332 the corporation's principal office is located, or, if none in ~~this~~ the Commonwealth, where its registered office  
4333 is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of  
4334 an application under this subsection on an expedited basis.

4335 C. If the court orders inspection and copying of the records demanded, it may impose reasonable  
4336 restrictions on their confidentiality, use, or distribution by the demanding member. If the court orders  
4337 inspection and copying of the records demanded, it may also order the corporation to pay the member's costs;

including reasonable counsel fees, expenses incurred to obtain the order if the member proves that the corporation (i) refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded or (ii) imposed unreasonable restrictions on the confidentiality, use, or distribution of 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.

**§ 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 the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office or, if none in the Commonwealth, its registered office is located may order inspection and copying of the books, records, and documents at the corporation's expense 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, the director's expenses 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.

**§ 13.1-935.2. Financial statements for members.**

A. Upon the written request of a member, a corporation shall deliver or make available to the requesting member by posting on its website or by other generally recognized means financial statements for the most recent fiscal year for which annual financial statements have been prepared for the corporation. The financial statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the corporation's fiscal year and an income statement for that year unless that information appears elsewhere in the financial statements. If financial statements for the specified period have been prepared for the corporation on the basis of generally accepted accounting principles, the corporation shall deliver or make available such financial statements to the requesting member.

B. If the annual financial statements are audited or otherwise reported upon by a public accountant, the accountant's report shall accompany them. If the annual financial statements are not reported upon by a public accountant, the president or the person responsible for the corporation's accounting records shall provide the member with a statement of the basis of accounting used in preparation of the annual financial statements and a description of any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

C. Notwithstanding the provisions of subsections A and B:

1. As a condition to delivering or making available financial statements to a requesting member, the corporation may require the requesting member to agree to reasonable restrictions on the confidentiality, use, and distribution of such financial statements; and

2. The corporation may, if it reasonably determines that the member's request is not made in good faith or for a proper purpose, decline to deliver or make available such financial statements to that member.

D. If a corporation does not respond to a member's request for financial statements pursuant to subsection A within 30 days of delivery of such request to the corporation's secretary:

1. The requesting member may apply to the circuit court in the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is located for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

2. If the court orders delivery or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

3. In such proceeding, if the corporation has declined to deliver or make available such financial statements because the requesting member had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, or distribution of such financial statements, the corporation shall have the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

4. In such proceeding, if the corporation has declined to deliver or make available such financial statements pursuant to subdivision C 2, the corporation shall have the burden of demonstrating that it had reasonably determined that the member's request was not made in good faith or for a proper purpose.

5. If the court orders delivery or access to the requested financial statements, it may order the corporation to pay the member's expenses incurred to obtain such order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the member had refused to agree to

reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the member's request was not made in good faith or for a proper purpose.

**§ 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 jurisdiction of formation;

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 a form 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.

**§ 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~~ transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to ~~conduct its affairs~~ transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$25, provided that for a domestic corporation that became a domestic corporation by conversion from a domestic stock corporation or eligible entity or by domestication or conversion from a foreign corporation or eligible entity that was authorized or registered to transact business in the Commonwealth at the time of the conversion or domestication, the annual registration fee shall be paid each year on or before the date on which its annual registration fee was due prior to the conversion or domestication. 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 that 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~~ transact business in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to transact business in the Commonwealth and shall assess against each such corporation the annual registration fee herein imposed. Notwithstanding the foregoing, for a domestic corporation that became a domestic corporation by conversion from a domestic stock corporation or eligible entity or by domestication or conversion from a foreign corporation or eligible entity that was authorized to transact business in the Commonwealth at the time of the domestication or conversion, the assessment shall be made as of the first day of the second month preceding the month in which its annual registration fee was due prior to the conversion or domestication. 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 7 (§ 55.1-653 et seq.) of Chapter 6 of Title 55.1, 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.

**§ 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 articles of incorporation and bylaws~~ of every corporation ~~heretofore or hereafter~~ organized in ~~this the~~ 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 the~~ Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

**§ 13.1-939. Saving provision.**

A. Except as provided in subsection B, the repeal of a statute by this ~~Act~~ chapter does not affect:

1. The operation of the statute or any action taken under it before its repeal;
2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;
3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or
4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this ~~Act~~ chapter is reduced by this ~~Act~~ chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this ~~Act~~ chapter.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

**§ 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 or eligible entity~~, converted into a domestic or foreign ~~limited liability company~~, ~~business trust, limited partnership or partnership eligible entity~~, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

**§ 13.1-1002. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. The articles of organization include the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of restatement, amendment, domestication, or merger, the articles of organization include only the restated articles of organization without the articles of restatement, amendment, domestication, or merger.

"Assignee" means a person to which all or part of a membership interest has been transferred, whether or not the transferor is a member.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited

4524 liability company in his capacity as a member.

4525 "Distribution" means a direct or indirect transfer of money or other property, or incurrence of  
4526 indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

4527 "Domestic," with respect to an entity, means an entity governed as to its internal affairs by the organic law  
4528 of the Commonwealth.

4529 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

4530 "Domestic corporation" has the same meaning as specified in § 13.1-603.

4531 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

4532 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in  
4533 § 13.1-803.

4534 "Domestic partnership" means an association of two or more persons to carry on as co-owners a business  
4535 for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for all purposes  
4536 of the laws of the Commonwealth, a registered limited liability partnership.

4537 "Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-603.

4538 "Effective date," when referring to a document for which effectiveness is contingent upon issuance of a  
4539 certificate by the Commission, means the time and date determined in accordance with § 13.1-1004.

4540 "Electronic transmission" means any form of communication, not directly involving the physical  
4541 transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient  
4542 thereof, and that may be directly reproduced in paper form by the recipient through an automated process.  
4543 Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act  
4544 (§ 59.1-479 et seq.) shall have the meaning set forth in that section.

4545 "Eligible interests" means, as to a partnership, partnership interest as specified in § 50-73.79; as to a  
4546 limited partnership, partnership interest as specified in § 50-73.1; as to a business trust, the beneficial interest  
4547 of a beneficial owner as specified in § 13.1-1226; as to a stock corporation, shares as specified in § 13.1-603;  
4548 or, as to a nonstock corporation, membership interest as specified in § 13.1-803.

4549 "Entity" includes any domestic or foreign limited liability company, any domestic or foreign other  
4550 business entity, any estate or trust, and any state, the United States, and any foreign government.

4551 "Entity conversion" means conversion. A certificate of entity conversion is the same as a certificate of  
4552 conversion.

4553 "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the organic law  
4554 of a jurisdiction other than the Commonwealth.

4555 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

4556 "Foreign corporation" has the same meaning as specified in § 13.1-603.

4557 "Foreign limited liability company" means an entity, excluding a foreign business trust, that is an  
4558 unincorporated organization that is organized under laws other than the laws of the Commonwealth and that  
4559 is denominated by that law as a limited liability company, and that affords to each of its members, pursuant to  
4560 the laws under which it is organized, limited liability with respect to the liabilities of the entity.

4561 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

4562 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-803.

4563 "Foreign partnership" means an association of two or more persons to carry on as co-owners a business  
4564 for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for  
4565 all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

4566 "Foreign protected series" means a protected series established by a foreign series limited liability  
4567 company and having attributes comparable to a protected series established under Article 16 (§ 13.1-1088 et  
4568 seq.). The term applies whether or not the law under which the foreign series limited liability company is  
4569 organized refers to "protected series" or "series."

4570 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and  
4571 50-73.79.

4572 "Foreign series limited liability company" means a foreign limited liability company having at least one  
4573 foreign protected series.

4574 "Foreign stock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-603.

4575 "Jurisdiction," when used to refer to a political entity, means the United States, a state, a foreign country,  
4576 or a political subdivision of a foreign country.

4577 "Jurisdiction of formation" means the state or country the law of which includes the organic law  
4578 governing a domestic or foreign limited liability company or other business entity.

4579 "Limited liability company" or "domestic limited liability company" means an entity that is an  
4580 unincorporated organization organized and existing under this chapter, or that has become a domestic limited  
4581 liability company of the Commonwealth pursuant to § 13.1-1010.3 as it existed prior to its repeal, even  
4582 though also being a non-United States entity organized under laws other than the laws of the Commonwealth,  
4583 or that has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even  
4584 though also being a non-United States entity organized under laws other than the laws of the Commonwealth,  
4585 or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.1 as

it existed prior to its repeal, or that has become a domestic limited liability company of the Commonwealth pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9, Article ~~17.1~~ (§ ~~13.1-944.1 et seq.~~) 11.2 (§ 13.1-898.8 et seq.) of Chapter 10, Article 14 (§ 13.1-1074 et seq.) or Article 15 (§ 13.1-1081 et seq.) of this chapter, or Article 12 (§ 13.1-1264 et seq.) of Chapter 14. A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

"Manager-managed limited liability company" means a limited liability company that is managed by a manager or managers as provided for in its articles of organization or an operating agreement.

"Member" means a person that has been admitted to membership in a limited liability company as provided in § 13.1-1038.1 and that has not ceased to be a member.

"Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

"Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets.

"Non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including a partnership, formed, incorporated, organized, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

"Operating agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business, or a writing or agreement of a limited liability company with one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

"Organic law" means the statute governing the internal affairs of a domestic or foreign limited liability company or other business entity.

"Organization surrender" has the same meaning as specified in § 13.1-1074. A certificate of organization surrender is the same as a certificate of domestication.

"Other business entity" means a domestic or foreign partnership, limited partnership, business trust, stock corporation, or nonstock corporation.

"Person" has the same meaning as specified in § 13.1-603. "Person" includes a protected series.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the limited liability company. The designation of the principal office in the most recent statement of change filed pursuant to § 13.1-1018.1 shall be conclusive for the purpose of this chapter.

"Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

"Protected series," except in the term "foreign protected series," means a person established under § 13.1-1095.

"Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

"Series limited liability company," except in the term "foreign series limited liability company," means a limited liability company having at least one protected series.

"Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.

"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.

"Transfer" includes an assignment, a conveyance, a sale, a lease, an encumbrance including a mortgage or security interest, a gift, and a transfer by operation of law.

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

#### **§ 13.1-1082. Entity conversion.**

A. A domestic limited liability company may become a domestic stock corporation or a domestic business trust pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of this article.

B. A domestic stock corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9.

C. A domestic nonstock corporation may become a domestic limited liability company pursuant to a plan

4648 of entity conversion that is adopted and approved by the corporation in accordance with the provisions of  
4649 Article 17.1 (~~§ 13.1-944.1 et seq.~~) 11.2 (*§ 13.1-898.8 et seq.*) of Chapter 10.

4650 D. A domestic business trust may become a domestic limited liability company pursuant to a plan of  
4651 entity conversion that is approved by the business trust in accordance with the provisions of Article 12  
4652 (*§ 13.1-1264 et seq.*) of Chapter 14.

4653 E. Unless otherwise provided for in Chapter 2.2 (*§ 50-73.79 et seq.*) of Title 50, a domestic partnership  
4654 that has filed either a statement of partnership authority or a statement of registration as a registered limited  
4655 liability partnership with the Commission that is not canceled may become a domestic limited liability  
4656 company pursuant to a plan of entity conversion that is approved by the domestic partnership in accordance  
4657 with the provisions of this article.

4658 F. Unless otherwise provided for in Chapter 2.1 (*§ 50-73.1 et seq.*) of Title 50, a domestic limited  
4659 partnership that has filed a certificate of limited partnership with the Commission that is not canceled may  
4660 become a domestic limited liability company pursuant to a plan of entity conversion that is approved by the  
4661 domestic limited partnership in accordance with the provisions of this article.

4662 **2. That §§ 13.1-898.6 and 13.1-898.7 and Article 17.1 (§§ 13.1-944.1 through 13.1-944.7) of Chapter 10**  
4663 **of Title 13.1 of the Code of Virginia are repealed.**

4664 **3. That the provisions of this act shall not affect the validity of any registration made, or other action**  
4665 **taken, prior to the effective date of this act with respect to a registered name filed pursuant to**  
4666 **§ 13.1-632 of the Code of Virginia or § 13.1-831 of the Code of Virginia, as amended by this act.**

4667 **4. That the provisions of this act shall become effective on July 1, 2027.**