

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 548

An Act to amend and reenact §§ 13.1-1002, 13.1-1014, 13.1-1028, 13.1-1035, 13.1-1038.1, 13.1-1046, 13.1-1067, and 54.1-2100 of the Code of Virginia, relating to limited liability companies; membership and distributions.

[H 2235]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1014, 13.1-1028, 13.1-1035, 13.1-1038.1, 13.1-1046, 13.1-1067, and 54.1-2100 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. It includes 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 amendment, it includes only the restated articles of organization and any subsequent amendments to the restated articles of organization, but does not include the articles of amendment accompanying the restated articles of organization.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

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

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

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

"Foreign corporation" has the same meaning as specified in § 13.1-603.

"Foreign limited liability company" means an entity that is an unincorporated association organized under laws other than the laws of this Commonwealth, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

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

"Foreign 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 this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association that is organized and existing under this chapter. *A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.*

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

"Manager-managed limited liability company" means a limited liability company that is managed by a manager or managers as provided for in its articles of organization or an operating agreement.

"Member" means a person that has been admitted to membership in a limited liability company as provided in § 13.1-1038.1 and that has not ceased to be a member.

"Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

"Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets.

"Non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including a partnership, formed, incorporated, organized, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

"Operating agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business, or a writing or agreement of a limited liability company with one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

"Person" has the same meaning as specified in § 13.1-603.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located.

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

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

§ 13.1-1014. Amendment of articles of organization.

A. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, to delete a provision not required in the articles, or to restate the articles.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved, unless the articles of organization require a greater vote, by a majority vote of the members entitled to vote thereon, *provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by the persons who formed the limited liability company under § 13.1-1010.*

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;
2. The text of each amendment adopted, or, if the amendments are a restatement of the articles of organization, ~~restate~~ *restated* articles of organization;
3. The date of each amendment's adoption; and
4. A statement that the amendment was adopted by a vote of the members *or by the persons who formed the limited liability company* in accordance with this chapter.

If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. If the articles of amendment contain a restatement of the articles of organization, the restated articles of organization supersede the original articles of organization and all prior amendments to them.

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

§ 13.1-1028. Information and records.

A. Each limited liability company shall keep at its principal office the following:

1. A current list of the full name and last known business address of each member, in alphabetical order;
2. A copy of the articles of organization and the certificate of organization, and all articles of amendment and certificates of amendment thereto;
3. Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three most recent years;
4. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years; and
5. Unless contained in a written operating agreement, a writing setting out:
 - a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute;
 - b. The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made;
 - c. Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution; and
 - d. Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

B. Each member has the right, upon reasonable request and subject to such reasonable standards as

may be set forth in an operating agreement, to:

1. Inspect and copy any of the limited liability company records required to be maintained by this section; and

2. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited liability company, (ii) promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited liability company as is ~~just and reasonable~~, *except to the extent the information demanded is unreasonable or otherwise improper under the circumstances.*

§ 13.1-1035. Restrictions on making distribution.

A. No distribution may be made by a limited liability company if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they became due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section either on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. The effect of a distribution under subsection A of this section is measured as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

D. [Repealed.]

E. For the purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

§ 13.1-1038.1. Admission of members.

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company; ~~and~~

2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040;

3. *In the case of a limited liability company that has no members as of the commencement of its existence under § 13.1-1004, as provided in any writing signed by both the initial member or members and the person who formed the limited liability company under § 13.1-1010; and*

4. *In the case of a limited liability company the last remaining member of which has dissociated, (i) as provided in a writing executed by the personal representative of that member, who may provide for the admission of the personal representative or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, provided that the articles of organization or an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to the admission of the personal representative of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, or (ii) in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of organization or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.*

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in an operating agreement or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:

1. A person may be admitted to a limited liability company as a member of the limited liability

company without acquiring a membership interest in the limited liability company; and

2. A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

§ 13.1-1046. Dissolution; generally.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of organization or an operating agreement;

2. Upon the unanimous written consent of the members;

3. ~~At any time there are no members. However, unless otherwise provided in the articles of organization or an operating agreement, the limited liability company is not dissolved and is not required to be wound up if, (i) within six months or such period as is provided for in the articles of organization or an operating agreement after the occurrence of the event that caused the dissociation of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company until the admission of the personal representative of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, provided that the articles of organization or an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member; or (ii) a member is admitted to the limited liability company in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, within six months or such other period as is provided for in the operating agreement after the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of organization or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;~~

4. The entry of a decree of judicial dissolution under § 13.1-1047; or

~~5.~~ 4. Automatic cancellation of its certificate pursuant to § 13.1-1064.

§ 13.1-1067. Property title records.

A. Whenever by (i) amendment to the articles of organization pursuant to § 13.1-1014, (ii) certificate of correction of the application for registration of a foreign limited liability company pursuant to § 13.1-1055, (iii) conversion of a general partnership or limited partnership to a limited liability company pursuant to § 13.1-1010.1, ~~or~~ (iv) *conversion of a corporation to a limited liability company where otherwise permitted by law*, or (v) domestication of a non-United States entity as a limited liability company pursuant to § 13.1-1010.3, the name of any domestic or foreign limited liability company is changed or a general or limited partnership, *corporation* or non-United States entity is converted to limited liability company form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name or conversion. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign limited liability company with one or more domestic or foreign limited liability companies, partnerships, limited partnerships, corporations or other entities pursuant to Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of this title or to the laws of a foreign jurisdiction, or by conversion of any entity to a foreign limited liability company pursuant to the laws of a foreign jurisdiction, a domestic or foreign limited liability company succeeds to the ownership of or any interest in real estate, and when such domestic or foreign limited liability company furnishes the Commission with a certificate of merger issued by the Commission or a similar certificate of merger or conversion issued by any competent authority of the jurisdiction under which any such foreign limited liability company is organized, the clerk of the Commission, upon request, shall issue a certificate that recites the succession to ownership of or interest in real estate. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.

§ 54.1-2100. Real estate broker defined.

For the purposes of this chapter, "real estate broker" means any person or business entity, including, but not limited to, a partnership, association, corporation, or limited liability ~~corporation~~ company, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums,

cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities, or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.