

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 373

An Act to amend and reenact §§ 12.1-43, 13.1-1204, 13.1-1213, 13.1-1214, 13.1-1217, 13.1-1254, and 13.1-1261 of the Code of Virginia and to repeal § 13.1-1260 of the Code of Virginia, relating to business trusts.

[S 855]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 12.1-43, 13.1-1204, 13.1-1213, 13.1-1214, 13.1-1217, 13.1-1254, and 13.1-1261 of the Code of Virginia are amended and reenacted as follows:

§ 12.1-43. Tax assessments, registration fee assessments, report forms, and correspondence mailed by Commission deemed delivered.

Tax assessments, registration fee assessments, report forms, and correspondence directed to a corporation, limited liability company, limited partnership ~~or~~, registered limited liability partnership *or business trust* and mailed by the Commission by first-class mail addressed to the registered agent of the corporation, limited liability company ~~or~~, registered limited liability partnership *or business trust* at its registered office or to the registered agent of the limited partnership shall be deemed to have been delivered to the entity.

If the corporation, limited liability company, limited partnership ~~or~~, registered limited liability partnership *or business trust* has no registered agent, such mailing shall be deemed to have been delivered to the entity when mailed by the Commission by first-class mail addressed to the entity at its principal or specified office address, as the case may be, or when mailed or delivered in person to any director, the president, vice president, secretary or any equivalent officer of the corporation, any member or manager of the limited liability company, ~~or~~ any general partner of the limited partnership or registered limited liability partnership, *or any trustee of the business trust*. The names and addresses of such persons and the principal and specified office addresses on record with the Commission shall be conclusive for the purposes of this section.

§ 13.1-1204. (Effective October 1, 2003) Fees.

The Commission shall charge and collect the following fees:

A 1. For filing any one of the following, the fee shall be \$100:

~~1~~ **a.** Articles of trust.

~~2~~ **b.** An application for registration as a foreign business trust.

~~3~~ **c.** Articles of reinstatement.

~~4~~ **d.** Articles of domestication.

~~5~~ **e.** Articles of conversion.

B 2. For filing any one of the following, the fee shall be ~~twenty-five dollars~~ \$25:

~~1~~ **a.** Articles of amendment.

b. *Articles of restatement.*

~~2~~ **c.** Articles of cancellation with respect to a domestic or foreign business trust.

~~3~~ **d.** Articles of correction referred to in § 13.1-1213 or a certificate of correction referred to in § 13.1-1245.

~~4~~ **e.** A copy of an instrument of merger of a foreign business trust referred to in § 13.1-1250.

~~5~~ **f.** Articles of merger.

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

~~1~~ **a.** An application to reserve or to renew the reservation of a name for use by a domestic or foreign business trust.

~~2~~ **b.** A notice of the transfer of a name reserved for use by a domestic or foreign business trust.

§ 13.1-1213. (Effective October 1, 2003) Articles of correction.

A. A business trust may correct its articles of trust at any time to correct a name or address specified in the articles of trust.

B. *For a correction to the articles of trust to be adopted, the correction shall be adopted by the sole trustee or a majority of the trustees, or in accordance with the articles of trust or the governing instrument of the business trust.*

C. To correct its articles of trust, a business trust shall file with the Commission articles of correction setting forth:

1. The name of the business trust; ~~and~~

2. The text of each correction;

3. A statement of the nature of the error necessitating each correction; and

4. A statement of the manner in which the correction was adopted.

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

§ 13.1-1214. (Effective October 1, 2003) Name.

A. The name of each business trust, as set forth in its articles of trust, may contain the following words: "company," "association," "club," "foundation," "fund," "institute," "society," "union," "syndicate," or "trust," or abbreviations of like import.

B. A business trust name shall not contain:

1. The words or phrases "corporation," "professional corporation," "incorporated," "limited company," "limited liability company," "professional limited liability company," "limited partnership," "registered limited liability partnership," "limited liability partnership," "trust company," or the abbreviations "Corp.," "Inc.," "L.C.," "LC," "L.L.C.," "LLC," "P.C.," "PC," "P.L.C.," "PLC," "P.L.L.C.," "PLLC," "L.P.," "LP," "R.L.L.P.," "RLLP," "L.L.P.," "LLP," "R.L.L.L.P.," "RLLLP," "L.L.L.P.," or "LLLP"; or

2. Any word or phrase the use of which is prohibited by law for such business trust.

C. Except as authorized by subsection D, a business trust name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic business trust or a foreign business trust registered to transact business in this Commonwealth;

2. A business trust or other business entity name reserved or registered pursuant to this chapter or Chapters 9 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 13 (§ 13.1-1100 et seq.) of this title or Chapter 2.1 (§ 50-73.1 et seq.) of Title 50; and

3. The designated name adopted by a foreign business trust because its real name is unavailable for use in this Commonwealth.

D. A domestic business trust may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other domestic or foreign business trust or other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying business trust.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

§ 13.1-1217. (Effective October 1, 2003) Restatement of articles of trust.

A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing instrument of the business trust, the sole trustee or a majority of the trustees may restate the articles of trust of a business trust at any time.

B. The restatement may include one or more amendments to the articles.

C. A business trust restating its articles of trust shall file with the Commission articles of restatement setting forth the name of the business trust and the text of the restated articles of trust together with a certificate setting forth:

1. The name of the business trust immediately prior to restatement;

2. The date of the restatement's adoption; and

3. A statement that the ~~amendment~~ *restatement* was adopted in accordance with the articles of trust and the governing instrument of the business trust.

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

E. The Commission may certify restated articles of trust as the articles of trust currently in effect without including the certificate information required by subsection C.

§ 13.1-1254. (Effective October 1, 2003) Penalty for failure to timely pay annual registration fees or file statement of change.

A. Any domestic or any foreign business trust failing to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1252 shall incur a penalty thereon of ~~twenty-five dollars~~ \$25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalties and liabilities imposed by law.

B. 1. If any domestic or foreign business trust fails to pay on or before October 1 of the year assessed the annual registration fee, the Commission shall mail notice to the business trust of impending cancellation of its certificate of trust or certificate of registration, as the case may be. The certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year. A domestic business trust whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 13.1-1234 et seq.) of this chapter.

2. *If any domestic or foreign business trust whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the*

Commission shall mail notice to the business trust of impending cancellation of its certificate of trust or certificate of registration, as the case may be. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day. A domestic business trust whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 13.1-1234 et seq.) of this chapter.

C. No beneficial owner, trustee or other agent of a business trust shall have any personal obligation for any liabilities of the business trust, whether such liabilities arise in contract, tort or otherwise, solely by reason of the failure or refusal of that business trust to pay the annual registration fee or by reason of the cancellation of the business trust's certificate of trust or certificate of registration, as applicable, pursuant to subsection B of this section.

D. A domestic or foreign business trust whose certificate of trust or certificate of registration has been canceled pursuant to subsection B of this section may be relieved of the cancellation, and its certificate of trust or certificate of registration shall be reinstated by paying, not later than two years following the date of cancellation, the annual registration fee required by § 13.1-1252, together with the late fee imposed by subsection A of this section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled. If the name of the business trust is not available at the time of reinstatement, as a precondition to reinstatement, the business trust, if domestic, shall file an amendment to its articles of trust to change its name or, if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1214.

E. If the domestic or foreign business trust complies with the provisions of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of trust or certificate of registration of the business trust. A domestic or foreign business trust whose certificate of trust or registration is reinstated within two years after the date on which it was canceled pursuant to subsection B of this section shall be deemed not to have had its certificate of trust or certificate of registration canceled. In that event, the reinstated domestic or foreign business trust resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 13.1-1261. (Effective October 1, 2003) Articles of merger.

After a plan of merger is approved by each party to the merger, the surviving business trust or other surviving business entity shall file with the Commission articles of merger ~~shall state~~ executed by each party to the merger setting forth:

1. The name and jurisdiction of formation or organization of each of the business trusts or other business entities planning to merge and, as to each foreign entity, the date of its formation, and whether it is authorized to do business in this Commonwealth;

2. That an agreement of merger has been approved and executed by each of the business trusts or other business entities planning to merge in the manner required by its governing instrument, articles of trust, articles of incorporation or charter, articles of organization or formation, certificate of limited partnership or other constituent documents and by the laws of the jurisdiction where it is organized;

3. The name of the successor business trust or other business entity;

4. Any amendment to the articles of incorporation or charter, certificate of limited partnership, articles of organization or formation of a limited liability company, articles of trust or governing instrument of the successor to be effected as part of the merger;

5. The manner and basis of converting or exchanging issued shares of stock of the merging corporations, outstanding partnership interests of the merging general partnerships, outstanding partnership interests of the merging limited partnerships, outstanding membership interests of the merging limited liability companies, or shares of beneficial interest of the merging business trusts into different shares of stock of a corporation, partnership interests of a general partnership, partnership interests of a limited partnership, membership interests of a limited liability company, shares of beneficial interest of a business trust, or other consideration, and the treatment of any issued shares of stock of the merging corporations, partnership interests of the merging general partnerships, partnership interests of the merging limited partnerships, membership interests of the merging limited liability companies, or shares of beneficial interest of the merging business trusts not to be converted or exchanged;

6. That the executed agreement of merger is on file at the principal place of business of the successor business trust or other business entity, and shall state the address of that principal place of business; and

7. That a copy of the agreement of merger will be furnished by the successor business trust or other business entity, on request and without cost, to any beneficial owner of any business trust or any person holding an interest in any other business entity that is a party to the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger.

- 2. That § 13.1-1260 of the Code of Virginia is repealed.**
- 3. That the provisions of this act shall become effective on October 1, 2003.**