

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 597

An Act to amend and reenact §§ 13.1-635, 13.1-720, 13.1-722.1, 13.1-764, 13.1-834, 13.1-896, 13.1-926, 13.1-1016, 13.1-1072, 13.1-1221, as it shall become effective, 50-73.5, 50-73.48:3, and 50-73.135 of the Code of Virginia, relating to mergers of business entities.

[H 1829]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-635, 13.1-720, 13.1-722.1, 13.1-764, 13.1-834, 13.1-896, 13.1-926, 13.1-1016, 13.1-1072, 13.1-1221, as it shall become effective, 50-73.5, 50-73.48:3, and 50-73.135 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-635. Change of registered office or registered agent.

A. A corporation may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-634.

B. A statement of change shall forthwith be filed in the office of the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-634.

C. If (i) *the business address of a registered agent changes his business address to another place within this Commonwealth, he* (ii) *the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-634, the registered agent or surviving entity shall change the address of the registered office of any corporation of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.*

§ 13.1-720. Articles of merger or share exchange.

A. After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring ~~corporation~~ *entity* shall file with the Commission articles of merger or share exchange *executed by each party to the merger or share exchange* setting forth:

1. The plan of merger or share exchange;
2. If shareholder approval was not required, a statement to that effect, including the reason approval was not required;
3. If approval of the shareholders of one or more corporations party to the merger or share exchange was required, with respect to each such corporation, either:
 - a. A statement that the plan was adopted by the unanimous consent of the shareholders; or
 - b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

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

C. In the case of a merger pursuant to § 13.1-719.:

1. *The articles need only be executed on behalf of the surviving corporation; and*
2. *The certificate of merger shall not be deemed a part of the articles of incorporation.*

§ 13.1-722.1. Merger of stock and nonstock corporations.

A. One or more stock corporations incorporated under this chapter may merge with one or more nonstock corporations incorporated under Chapter 10 (§ 13.1-801 et seq.) of this title. The surviving corporation may be or, pursuant to subdivision D 1, become a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation shall adopt and its shareholders, if required by § 13.1-718, shall approve, and the governing body of each nonstock corporation shall adopt and its members, if required by § 13.1-895, shall approve, the plan of merger.

C. The plan of merger shall set forth:

1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

2. The terms and conditions of the merger and the mode of carrying the same into effect;

3. The manner and basis of converting the shares of each stock corporation and the membership interests of each nonstock corporation into shares, obligations or other securities of the surviving stock corporation or membership interests of the surviving nonstock corporation, and, if any shares of any such stock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving from such merger, the cash, other property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, which cash, other property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving from such merger.

D. The plan of merger may set forth:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and

2. Other provisions relating to the merger.

E. The plan of merger required by subsection B of this section, in the case of each stock corporation, shall be adopted and approved in the manner provided in this article and, in the case of each nonstock corporation, shall be adopted and approved in the manner provided in Article 11 (§ 13.1-894 et seq.) of Chapter 10 of this title.

F. After a plan of merger is approved by the shareholders and members, or adopted by the board of directors if shareholder ~~and/or~~ approval, member approval, *or both shareholder and member approval* is not required, the surviving corporation shall file with the Commission articles of merger *executed by each party to the merger* setting forth:

1. The plan of merger;

2. If shareholder approval was not required, a statement to that effect, including the reason approval was not required;

3. If approval of the shareholders of one or more stock corporations party to the merger was required, with respect to each such corporation, either:

a. A statement that the plan of merger was adopted by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

4. If the members of any merging nonstock corporation have voting rights, then as to each such corporation, either:

a. A statement that the plan of merger was adopted 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 the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), and a statement of:

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

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each voting group was sufficient for approval by that voting group.

5. If any merging nonstock corporation has no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

G. 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.

§ 13.1-764. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in this Commonwealth may change its registered office or registered agent by filing with the Commission a statement of change 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 address of the new registered office, including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-763.

B. 1. A new statement shall forthwith be filed by the corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-763.

2. If (i) *the business address of a registered agent changes his business address to another place within this Commonwealth, he* (ii) *the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-763, the registered agent or surviving entity shall change the address of the registered office of any corporation of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.*

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

A. A corporation may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement on a form supplied by the Commission that sets forth:

1. The name of the corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address (including the street and number, if any) of the new registered office and the name of the county or city 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 shall be in compliance with the requirements of § 13.1-833.

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

C. If (i) *the business address of a registered agent changes his business address to another place within this Commonwealth, he* (ii) *the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-833, the registered agent or surviving entity shall change the address of the registered office of any corporation of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and shall recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.*

§ 13.1-896. Articles of merger.

A. After a plan of merger is approved by the members, or adopted by the board of directors if member approval is not required, the surviving corporation shall file with the Commission articles of merger *executed by each party to the merger* setting forth:

1. The plan of merger.
2. Where the members of any merging corporation have voting rights, then as to each such corporation, either:
 - a. A statement that the plan was adopted 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 existence of a quorum of each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
3. Where any merging corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

B. 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.

§ 13.1-926. Change of registered office or registered agent of foreign corporation.

A. A foreign corporation authorized to transact business in this Commonwealth may change its registered office or registered agent by filing with the Commission a statement of change 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 address of the new 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 to be located).
4. The name of its current registered agent.
5. If its current registered agent is to be changed, the name of the new registered agent.
6. That after the change or changes are made, the corporation shall be in compliance with the requirements of § 13.1-925.

B. A new statement shall forthwith be filed by the corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-925.

C. If (i) *the business address of a registered agent changes his business address to another place within this Commonwealth, he* (ii) *the name of a registered agent changes, or* (iii) *a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-925, the registered agent or surviving entity shall change the address of the registered office of any corporation of which he is registered agent by filing forthwith file a statement as required above except that it need be signed only by the registered agent or the surviving entity and shall recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.*

§ 13.1-1016. Change of registered office or registered agents.

A. A limited liability company or a foreign limited liability company registered pursuant to Article 11 (§ 13.1-1061 et seq.) of this chapter may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current 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 limited liability company or foreign limited liability company will be in compliance with the requirements of § 13.1-1015.

B. A statement of change shall forthwith be filed in the office of the Commission by a limited liability company or a foreign limited liability company registered pursuant to Article 11 (§ 13.1-1061 et seq.) of this chapter whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1015.

C. If (i) *the business address of a registered agent changes his business address to another place within this Commonwealth, he* (ii) *the name of a registered agent changes, or* (iii) *a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-1015, the registered agent or surviving entity shall change the address of the registered office of any limited liability company or foreign limited liability company of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the limited liability company on whose behalf it is to be filed.*

§ 13.1-1072. Articles of merger.

A. After a plan of merger is approved by each domestic or foreign limited liability company, partnership, limited partnership or corporation party to the merger, the surviving domestic or foreign limited liability company, partnership, limited partnership or corporation shall file with the Commission articles of merger *executed by each party to the merger* setting forth:

1. The plan of merger;
2. If the surviving entity of the merger is a foreign limited liability company not registered with the Commission under § 13.1-1052, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign registered limited liability partnership not registered with the Commission under § 50-73.138 or § 50-43.7, or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed or incorporated;
3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, by each domestic limited liability company party to the merger in accordance with § 13.1-1071 and by each domestic limited partnership party to the merger in accordance with § 50-73.48:2; and
4. If a domestic corporation is a party to the merger, any additional information required by § 13.1-720.

B. If a foreign limited liability company, partnership, limited partnership or corporation is a party to the merger, the articles of merger may contain a statement that the merger is permitted by the state or country under whose law that limited liability company is organized, that partnership or limited

partnership is formed or that corporation is incorporated and that the foreign limited liability company, partnership, limited partnership or corporation has complied with that law in effecting the merger. If such a statement is included in the articles of merger, the surviving partnership, limited partnership, limited liability company or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to § 13.1-766.1, § 13.1-1060 or § 50-73.57:2.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is ~~fifteen~~ 15 days after the date on which the Commission issues the certificate of merger.

D. A certificate of merger shall act as a certificate of cancellation as described in § 13.1-1050 for a domestic limited liability company that is not the surviving entity of the merger, and that limited liability company's certificate of organization shall be canceled upon the effective date of the certificate of merger.

§ 13.1-1221. (Effective October 1, 2003) Change of registered office or registered agent.

A. A business trust or a foreign business trust registered pursuant to Article 9 (§ 13.1-1241 et seq.) of this chapter may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the business trust or foreign business trust;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the business trust or foreign business trust will be in compliance with the requirements of § 13.1-1220.

B. A statement of change shall forthwith be filed in the office of the Commission by a business trust or a foreign business trust registered pursuant to Article 9 (§ 13.1-1241 et seq.) of this chapter whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1220.

C. If *(i) the business address of a registered agent changes his business address to another place within this Commonwealth, he (ii) the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-1220, the registered agent or surviving entity shall change the address of the registered office of any business trust or foreign business trust of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and shall recite that a copy of the statement has been mailed to the business trust on whose behalf it is to be filed.*

§ 50-73.5. Change of registered agent.

A. A limited partnership may change its registered agent or the address of its registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited partnership;
2. The address of its current registered agent;
3. If the current address of its registered agent is to be changed, the post-office address, including the street and number, if any, of the new address of its registered agent, 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;
6. That after the change or changes are made, the limited partnership will be in compliance with the requirements of § 50-73.4.

B. A new statement shall forthwith be executed by the limited partnership whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 50-73.4.

C. If *(i) the business address of a registered agent changes his business address to another place within this Commonwealth, he (ii) the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 50-73.4, the registered agent or surviving entity shall change his address for any limited partnership of which he is a registered agent by filing forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the limited partnership on whose behalf it is to be filed at its specified office.*

§ 50-73.48:3. Articles of merger.

A. After a plan of merger is approved by each domestic or foreign limited partnership, limited

liability company or corporation that is a party to the merger, the surviving domestic or foreign partnership, limited partnership, limited liability company or corporation shall file with the Commission articles of merger *executed by each party to the merger* setting forth:

1. The plan of merger;

2. If the surviving entity of the merger is a foreign limited liability partnership not registered with the Commission under § 50-43.7 or § 50-73.138, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign limited liability company not registered with the Commission under § 13.1-1052 or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was formed, organized or incorporated;

3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, each domestic limited partnership party to the merger in accordance with § 50-73.48:2 and by each domestic limited liability company party to the merger in accordance with § 13.1-1071; and

4. If a domestic corporation is a party to the merger, any additional information required by § 13.1-720.

B. If a foreign partnership, limited partnership, limited liability company or corporation is a party to the merger, the articles of merger may contain a statement that the merger is permitted by the state or country under whose law that partnership or limited partnership is formed, that limited liability company is organized or that corporation is incorporated and that the foreign partnership, limited partnership, limited liability company or corporation has complied with that law in effecting the merger. If such a statement is included in the articles of merger, a surviving limited partnership, limited liability company or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to § 13.1-766.1, § 13.1-1060 or § 50-73.57:2, as the case may be.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is ~~fifteen~~ 15 days after the date on which the Commission issues the certificate of merger.

D. A certificate of merger shall act as a certificate of cancellation as described in § 50-73.13 for a domestic limited partnership that is not the surviving entity of the merger, and that partnership's certificate of limited partnership shall be cancelled upon the effective date of the certificate of merger.

§ 50-73.135. Registered office and registered agent.

A. Each registered limited liability partnership and each foreign registered limited liability partnership registered pursuant to this article shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent who shall be either:

- a. An individual who is a resident of this Commonwealth and is either (i) a general partner of the registered limited liability partnership, (ii) an officer or director of a corporate general partner of the registered limited liability partnership, (iii) a general partner of a general partner of the registered limited liability partnership, (iv) a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, (v) a trustee of a trust that is a general partner of the registered limited liability partnership, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office; or

- b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The registered agent of a registered limited liability partnership or foreign registered limited liability partnership is the partnership's agent for service of process, notice, or demand required or permitted by law to be served on the partnership. The sole duty of the registered agent is to forward to the registered limited liability partnership or foreign registered limited liability partnership at its last known address any process, notice or demand that is served on the registered agent.

C. A registered limited liability partnership or a foreign registered limited liability partnership may change its registered agent or the address of its registered office, or both, upon filing with the Commission a certificate of change on a form supplied by the Commission that sets forth:

1. The name of the partnership;

2. The address of its current registered office;

3. If the current address of its registered office is to be changed, the post-office address, including the street and number, if any, of the new address of its registered office, and the name of the city or

county in which it is 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 partnership will be in compliance with the requirements of this section.

D. Whenever its registered agent dies, resigns or ceases to satisfy the requirements of subsection A of this section, a registered limited liability partnership or foreign registered limited liability partnership shall promptly execute and file with the Commission a certificate of change.

E. If *(i) the business address of a registered agent changes his business address to another place within this Commonwealth, he (ii) the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to subsection A of this section, the registered agent or surviving entity shall change his address for any registered limited liability partnership or foreign registered limited liability partnership of which he is a registered agent by filing forthwith file a certificate of change as required in subsection D, except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and shall recite that a copy of the certificate has been mailed to the partnership on whose behalf it is to be filed at its principal office.*

F. A registered agent may resign his agency appointment by signing and filing with the Commission a certificate of resignation accompanied by his certification that he has mailed a copy thereof by certified mail to the address of the principal office of the partnership set forth in the statement of registration for the registered limited liability partnership or foreign registered limited liability partnership. The agency appointment is terminated on the thirty-first day after the date on which the certificate was filed.

G. Whenever a registered limited liability partnership or a foreign registered limited liability partnership fails to appoint or maintain a registered agent in this Commonwealth or whenever its registered agent cannot with reasonable diligence be found at his address, the clerk of the Commission shall be the agent of the partnership upon whom service may be made in accordance with § 12.1-19.1.

H. This section does not prescribe the only means, or necessarily the required means, of serving a registered limited liability partnership or a foreign registered limited liability partnership.

2. That the provisions of this act amending § 13.1-1221 of the Code of Virginia shall become effective on October 1, 2003.