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SENATE BILL NO. 881

Offered January 8, 2003

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A BILL to amend and reenact §§ 50-73.79, 50-73.83, 50-73.93, 50-73.115, 50-73.121, and 50-73.131 of the Code of Virginia, relating to the Virginia Uniform Partnership Act; statements of partnership authority, dissociation, dissolution, and merger.

 Patron—Wampler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 50-73.79, 50-73.83, 50-73.93, 50-73.115, 50-73.121, and 50-73.131 of the Code of Virginia are amended and reenacted as follows:

§ 50-73.79. Definitions.

In this article:

"Business" includes every trade, occupation, and profession.

"Commission" means the State Corporation Commission of Virginia.

"Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal, state, or foreign law governing insolvency.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

"Foreign registered limited liability partnership" means a limited liability partnership or registered limited liability partnership, or the functional equivalent thereof, formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this Commonwealth and registered as a limited liability partnership under the laws of that state or jurisdiction.

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

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

"Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this Commonwealth and registered under § 50-73.132.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Statement" means a statement of partnership authority under § 50-73.93, a statement of denial under § 50-73.94, a statement of dissociation under § 50-73.115, a statement of dissolution under § 50-73.121, a statement of merger under § 50-73.131, a statement of registration as a registered limited liability partnership under § 50-73.132, a statement of ~~qualification~~ registration as a foreign registered limited liability partnership under § 50-73.138 ~~or~~, an amendment or cancellation of any of the foregoing ~~or a renewal of a statement of partnership authority~~.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

§ 50-73.83. Execution, filing, and recording of statements.

A. A statement may be filed with the Commission. A duly authenticated copy of a statement that is filed in an office in another state may be filed with the Commission. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this Commonwealth.

B. A duly authenticated copy of a statement that has been filed with the Commission and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this

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chapter. A recorded statement that is not a duly authenticated copy of a statement filed with the Commission does not have the effect provided for recorded statements in this chapter.

C. A statement filed by a partnership shall be executed by at least two partners. Other statements shall be executed by a partner or other person authorized by this chapter. The person executing a statement shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate. Any person may execute a statement by an attorney-in-fact.

D. A person authorized by this chapter to file a statement may ~~amend~~:

1. *Amend* or cancel the statement by filing an amendment or cancellation that names the partnership, *states the identification number issued by the Commission to the partnership*, identifies the statement, and states the substance of the amendment or cancellation; and

2. *Renew a statement of partnership authority by filing during the 90-day period preceding the date of the statement's cancellation by operation of law, a renewal of a statement of partnership authority that names the partnership, states the identification number issued by the Commission to the partnership, states the partnership's desire to renew the statement of partnership authority, and states that all of the information set forth in the statement of partnership authority is true and correct as of the execution date of the renewal.*

E. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

F. The Commission shall charge and collect the following fees:

1. The fee shall be \$100 for any one of the following:

- a. For filing a statement of registration as a registered limited liability partnership;
- b. For filing a statement of registration as a foreign registered limited liability partnership; or
- c. For restoration of status pursuant to subdivision E 1 of § 50-73.134.

2. The fee shall be ~~fifty dollars~~ \$50 for filing any one of the following:

- a. An amendment to a statement of registration as a registered limited liability partnership;
- b. An amendment to a statement of registration as a foreign registered limited liability partnership; or
- c. An annual continuation report pursuant to § 50-73.134.

3. For filing any other statement or amendment thereto ~~or~~, cancellation thereof *or renewal of a statement of partnership authority*, the fee shall be ~~twenty-five dollars~~ \$25. The fees paid into the state treasury under this section shall be set aside and paid into the special fund created under § 13.1-775.1, subject to that section. The court responsible for recording transfers of real property may collect a fee for recording a statement.

G. The Commission may provide forms for statements and reports.

H. Any statement filed with the Commission under this chapter shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed statements may be filed. In every case, information in the statement shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality. The statement shall be in the English language. A partnership name need not be in English if written in English letters or Arabic or Roman numerals. Any signature on a statement may be a facsimile.

I. The Commission may accept the electronic filing of any information required or permitted to be filed under this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

J. A statement shall be effective at the time of the filing of the statement with the Commission as set forth in this section unless the statement states that it shall become effective at a later time and date specified in the statement. In that event, the statement 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 statement is filed with the Commission.

§ 50-73.93. Statement of partnership authority.

A. A partnership may file a statement of partnership authority, which:

1. Shall include:

- a. The name of the partnership;
- b. The name of the state or other jurisdiction of its formation;
- c. The street address of its chief executive office and of one office in this Commonwealth, if there is one;
- d. The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection B; and
- e. The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

2. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

B. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

C. If a filed statement of partnership authority is executed pursuant to subsection C of § 50-73.83 and states the name of the partnership but does not contain all of the other information required by subsection A, the statement nevertheless operates with respect to a person not a partner as provided in subsections D and E.

D. Except as otherwise provided in subsection G, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

1. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

2. A grant of authority to transfer real property held in the name of the partnership contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then of record with the Commission. The filing of a cancellation of a limitation on authority revives the previous grant of authority.

E. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a filed statement containing the limitation on authority is of record with the Commission.

F. Except as otherwise provided in subsections D and E and §§ 50-73.115 and 50-73.121, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

G. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five 5 years after the date on which the statement, *the most recent renewal*, or the most recent amendment, was filed with the Commission.

H. A partnership that changes its name shall promptly amend its statement of partnership to reflect its new name unless its statement of partnership authority has been canceled.

§ 50-73.115. Statement of dissociation.

A. A dissociated partner *named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection B of § 50-73.93* or ~~the~~ a partnership that has filed a statement of partnership authority that has not been canceled may file a statement of dissociation stating the name of the partnership, *the identification number issued by the Commission to the partnership*, and that the partner is dissociated from the partnership.

B. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections D and E of § 50-73.93.

C. For the purposes of subdivision A 3 of § 50-73.113 and subdivision B 3 of § 50-73.114, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

§ 50-73.121. Statement of dissolution.

A. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution *for a partnership that has filed a statement of partnership authority that has not been canceled* stating the name of the partnership, *the identification number issued by the Commission to the partnership*, and that the partnership has dissolved and is winding up its business.

B. A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection D of § 50-73.93 and is a limitation on authority for the purposes of subsection E of § 50-73.93.

C. For the purposes of §§ 50-73.91 and 50-73.120, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

D. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections D and E of § 50-73.93 in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

§ 50-73.131. Statement of merger.

A. After a merger, the surviving partnership or limited partnership ~~may~~ *shall file with the Commission a statement that one or more of merger on behalf of the partnerships or limited partnerships have merged into the surviving entity; but if a partnership or limited partnership that is a party to the*

182 merger has, before the effective date of the merger, have filed a statement or certificate with the
183 Commission under this title; a statement *statements of merger shall be filed partnership authority that*
184 *have not been canceled.*

185 B. A statement of merger *executed by each party to the merger* shall contain:

186 1. The name of each partnership or limited partnership that is a party to the merger;

187 2. The name of the surviving entity into which the other partnerships or limited partnership were
188 merged;

189 3. *The identification number issued by the Commission to each partnership that has filed a statement*
190 *of partnership authority that has not been canceled;*

191 4. The street address of the surviving entity's chief executive office and of an office in this
192 Commonwealth, if any; and

193 4 5. Whether the surviving entity is a partnership or a limited partnership.

194 C. Except as otherwise provided in subsection D, for the purposes of § 50-73.92, property of the
195 surviving partnership or limited partnership which before the merger was held in the name of another
196 party to the merger is property held in the name of the surviving entity upon filing a statement of
197 merger.

198 D. For the purposes of § 50-73.92, real property of the surviving partnership or limited partnership
199 which before the merger was held in the name of another party to the merger is property held in the
200 name of the surviving entity upon recording a certified copy of the statement of merger in the office for
201 recording transfers of that real property.

202 E. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate
203 pursuant to subsection C of § 50-73.83, stating the name of a partnership or limited partnership that is a
204 party to the merger in whose name property was held before the merger and the name of the surviving
205 entity, but not containing all of the other information required by subsection B, operates with respect to
206 the partnerships or limited partnerships named to the extent provided in subsections C and D.