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**SENATE BILL NO. 1285**

Offered January 10, 2007

Prefiled January 10, 2007

*A BILL to amend and reenact §§ 13.1-603, 13.1-607, 13.1-610, 13.1-654, 13.1-656, 13.1-657, 13.1-666, 13.1-669, 13.1-672.1, 13.1-677, 13.1-679, 13.1-682, 13.1-704, 13.1-711, 13.1-718, 13.1-729, 13.1-730, 13.1-732, 13.1-733, 13.1-734, 13.1-735.1, 13.1-737, 13.1-738, 13.1-746, 13.1-746.1, 13.1-747, 13.1-748, and 13.1-749.1 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 13.1-610.1, by adding in Article 8.1 of Chapter 9 of Title 13.1 a section numbered 13.1-672.6, and by adding in Article 15 of Chapter 9 of Title 13.1 a section numbered 13.1-741.1, relating to the Virginia Stock Corporation Act.*

Patron—Stosch

Referred to Committee on Commerce and Labor

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

**1. That §§ 13.1-603, 13.1-607, 13.1-610, 13.1-654, 13.1-656, 13.1-657, 13.1-666, 13.1-669, 13.1-672.1, 13.1-677, 13.1-679, 13.1-682, 13.1-704, 13.1-711, 13.1-718, 13.1-729, 13.1-730, 13.1-732, 13.1-733, 13.1-734, 13.1-735.1, 13.1-737, 13.1-738, 13.1-746, 13.1-746.1, 13.1-747, 13.1-748, and 13.1-749.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-610.1, by adding in Article 8.1 of Chapter 9 of Title 13.1 a section numbered 13.1-672.6, and by adding in Article 15 of Chapter 9 of Title 13.1 a section numbered 13.1-741.1 as follows:**

§ 13.1-603. Definitions.

In this chapter:

"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 consolidation, serial designation, reduction, correction, and merger, except for a certificate of merger with a subsidiary pursuant to § 13.1-719 that does not include an amendment to the survivor's articles of incorporation. It excludes articles of *share* exchange filed by an acquiring corporation. 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, including any articles of serial designation, without the accompanying articles of *restatement*, amendment, domestication, or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or which has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701,

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59 is also not a party to the proceeding. The presence of one or more of the following circumstances shall  
60 not by itself prevent a person from being a disinterested director: (i) nomination or election of the  
61 director to the current board by any person, acting alone or participating with others, who is so  
62 interested in the matter; (ii) service as a director of another corporation of which an interested person is  
63 also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant,  
64 as a director against whom action is demanded, or as a director who approved the act being challenged.

65 "Distribution" means a direct or indirect transfer of money or other property, except its own shares,  
66 or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any  
67 of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase,  
68 redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or  
69 otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or  
70 personal representative of a deceased shareholder, or any other shareholder, but only to the extent the  
71 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the  
72 board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

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

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

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

76 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in  
77 § 13.1-803.

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

81 "Effective date of notice" is defined in § 13.1-610.

82 "Electronic transmission" means any form of communication, not directly involving the physical  
83 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient  
84 thereof, and that may be directly reproduced in paper form by such a recipient through an automated  
85 process. Any term used in this definition that is defined in § 59.1-480 shall have the meaning set forth  
86 in such section.

87 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock  
88 corporation.

89 "Eligible interests" means interests or memberships.

90 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A  
91 director may accept duties that make him also an employee.

92 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation;  
93 any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and  
94 any foreign government.

95 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

96 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws  
97 other than the laws of the Commonwealth.

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

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

100 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in  
101 § 13.1-803.

102 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a  
103 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and  
104 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability  
105 partnership.

106 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

107 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed  
108 by an organic law of a jurisdiction other than the Commonwealth.

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

110 "Includes" denotes a partial definition.

111 "Individual" means a natural person.

112 "Interest" means either or both of the following rights under the organic law of an unincorporated  
113 entity:

114 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation;  
115 or

116 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent,  
117 assignee, proxy or person responsible for managing its business and affairs.

118 "Means" denotes an exhaustive definition.

119 "Membership" means the rights of a member in a domestic or foreign nonstock corporation or  
120 limited liability company.



"Notice" is defined in § 13.1-610.

"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.

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

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

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

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"Shares" means the units into which the proprietary interests in a corporation are divided.

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

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

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

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

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

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

§ 13.1-607. Correcting filed articles.

A. The board of directors of a ~~domestic or foreign~~ corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were defectively executed, 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 setting forth:*

1. ~~By preparing articles of correction that:~~*The name of the corporation prior to filing;*

a2. ~~Describe~~*A description of the articles to be corrected, including their effective date; and*

b. ~~Correct the inaccuracy or defect; and~~

2. ~~By filing the articles of correction with the Commission.~~

3. *Each inaccuracy and defect that is to be corrected;*

4. *The correction of each inaccuracy and defect; and*

5. *A statement that the board of directors authorized the correction and the date of such authorization.*

C. 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~~ *may be filed with* the Commission ~~when received~~ more than 30 days after the effective date of the certificate relating to the articles to be corrected.

§ 13.1-610. Notice.

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

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. Notice by electronic transmission is written notice.

B. Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by 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 broadcast communication in the area where the notice is intended to be given.

C. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

D. Written notice to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be addressed to its registered agent at its registered office or to the *secretary of the corporation* ~~or its secretary~~ at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet filed an annual report, in its application for a certificate of authority.

E. Except as provided in subsection C, written notice, if in a comprehensible form, is effective at the earliest of the following:

1. When received;
2. Five days after its deposit in the United States mail if mailed postpaid and correctly addressed;
3. On the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

F. Oral notice is effective when communicated if communicated in a comprehensible manner.

G. When this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

H. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices 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 to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subsection shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the shareholder of such specific posting when such notice is directed to the record address of the shareholder or to such other address at which the shareholder has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the shareholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. This subsection shall not apply to subsection D of § 13.1-642.

I. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

§ 13.1-610.1. Householding.

A. A corporation *shall be deemed to have delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to all shareholders who share a common address as shown on the corporation's current record of shareholders if:*

1. *The corporation delivers one copy of the notice, report or statement to the common address;*
2. *The corporation addresses the notice, report or statement to those shareholders either as a group*



or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

3. Each of those shareholders consents, including any implied consent pursuant to subsection B, to delivery of a single copy of such notice, report or statement to the shareholders' common address.

B. Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection A, shall be deemed to have consented to receiving such single copy at the common address.

C. Any consent pursuant to this section shall be revocable by any shareholder who delivers written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

§ 13.1-654. Annual meeting.

A. ~~Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 13.1-657,~~ a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. Annual shareholders' meetings may be held at such place, in or out of ~~this~~ the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. If the articles of incorporation or bylaws so provide, shareholders may participate in an annual meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

D. 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.

§ 13.1-656. Court-ordered meeting.

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

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

2. On petition of a shareholder who signed a demand for a special meeting that satisfies the requirements of § 13.1-655 if:

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

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

B. The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§ 13.1-657. Action without meeting.

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

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time such corporate action is taken, corporate action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, if the corporate action is taken by shareholders who would be entitled to vote at a meeting of holders of outstanding shares having voting power to cast not less than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all shareholders entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by ~~all~~ the shareholders entitled to take such corporate action ~~without a meeting vote on the action, bearing the date of each signature~~, and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. ~~Any~~



corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein provided the consent states the date of execution by each shareholder.

B. The articles of incorporation may provide that any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date on which each shareholder signed the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

C. If not otherwise determined fixed under § 13.1-656 or 13.1-660; the record date for determining shareholders entitled to take corporate action without a meeting is the date the first shareholder signs the consent under subsection A and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days after of the earliest date of execution appearing on which a consent delivered to the corporation in the manner as required by this section was signed, written consents signed by the holders of shares having sufficient in number votes to take corporate the action are received by have been delivered to the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of delivered to the corporation before unrevoked written consents sufficient in number to take corporate the action are delivered to the corporation.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-603. A consent signed under this section has the effect of a vote of voting shareholders at a meeting and may be described as such in any document filed with the Commission under this chapter.

D. If corporate action is to be taken under A consent signed pursuant to the provisions of this section by less than all of the shareholders entitled to vote on the action, the corporation shall give to all shareholders on the record date who are entitled to vote on the matter written notice of the proposed corporate action not less than five days before it is taken. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to shareholders in a notice of meeting at which the corporate action would have been submitted to the shareholders for a vote has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation. Corporate action taken under this section is effective as of the date specified therein provided the consent states the date of execution by each consenting shareholder.

E. If this chapter requires that notice of a proposed corporate action be given to nonvoting shareholders and the corporate action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed corporate action not less than five days before it is taken. The notice shall action not less than 15 days before the action becomes effective and not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the corporate proposed action would have been submitted to the shareholders for a vote action.

F. If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not less than 15 days before the action becomes effective and not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

G. An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the



shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

*H. Delivery of a written consent to the corporation under this section is effected by delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.*

§ 13.1-666. Quorum and voting requirements for voting groups.

A. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

B. Once a share is represented for any purpose at a meeting, it 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. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes. *An abstention or an election by a shareholder not to vote on the action because of the failure to receive voting instructions from the beneficial owner of the shares shall not be considered a vote cast.*

D. Less than a quorum may adjourn a meeting.

E. The election of directors is governed by § 13.1-669.

§ 13.1-669. Voting for directors; cumulative voting.

A. Unless otherwise provided in the articles of incorporation *or the bylaws*, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

B. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of shareholders are entitled to cumulate their votes for directors" or words of similar import means that the shareholders 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. Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

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

*E. If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors, directors may not be elected by written consent pursuant to § 13.1-657 unless it is unanimous.*

#### Article 8.1.

##### Derivative Proceedings and Other Shareholder Actions.

§ 13.1-672.1. Standing; condition precedent; stay of proceedings.

A. A shareholder ~~may~~ *shall* not commence or maintain a derivative proceeding unless the shareholder:

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

2. Became a shareholder through transfer by operation of law from one who was a shareholder at that time; or

3. Became a shareholder before public disclosure and without knowledge of the act or omission complained of; and

4. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

B. No shareholder may commence a derivative proceeding until:

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

2. Ninety days have expired from the date demand was made unless (i) the shareholder has been notified before the expiration of ~~ninety~~ 90 days that the demand has been rejected by the corporation or (ii) irreparable injury to the corporation would result by waiting until the end of the ~~ninety~~ 90-day period.

C. If the corporation commences a review and evaluation of the allegations made in the demand or



428 complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

429 § 13.1-672.6. *Shareholder action to appoint custodian or receiver for a public corporation.*

430 A. *The circuit court in any city or county where a public corporation's principal office is or was last*  
431 *located, or, if none in the Commonwealth, where its registered office is or was last located may appoint*  
432 *one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a*  
433 *public corporation in a proceeding by a shareholder where it is established that:*

434 1. *The directors are deadlocked in the management of the corporate affairs, the shareholders are*  
435 *unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered;*  
436 *or*

437 2. *The directors or those in control of the corporation are acting fraudulently and irreparable injury*  
438 *to the corporation is threatened or being suffered.*

439 B. *The court:*

440 1. *May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers*  
441 *and duties the court directs, take other action to preserve the corporate assets wherever located, and*  
442 *carry on the business of the corporation until a full hearing is held;*

443 2. *Shall hold a hearing, after notifying all parties to the proceeding and any interested persons*  
444 *designated by the court, before appointing a custodian or receiver; and*

445 3. *Has jurisdiction over the corporation and all of its property, wherever located.*

446 C. *The court may appoint an individual or domestic or foreign corporation, authorized to transact*  
447 *business in the Commonwealth, as a custodian or receiver and may require the custodian or receiver to*  
448 *post bond, with or without sureties, in an amount the court directs.*

449 D. *The court shall describe the powers and duties of the custodian or receiver in its appointing*  
450 *order, which may be amended from time to time. Among other powers:*

451 1. *A custodian may exercise all of the powers of the corporation, through or in place of its board of*  
452 *directors, to the extent necessary to manage the business and affairs of the corporation; and*

453 2. *A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at*  
454 *a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own*  
455 *name as receiver in all courts of the Commonwealth.*

456 E. *The court during a custodianship may designate the custodian a receiver, and during a*  
457 *receivership may redesignate the receiver a custodian, if doing so is in the best interests of the*  
458 *corporation.*

459 F. *The court from time to time during the custodianship or receivership may order compensation*  
460 *paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of*  
461 *the corporation or proceeds from the sale of its assets.*

462 § 13.1-677. *Terms of directors generally.*

463 A. *The terms of the initial directors of a corporation expire at the first shareholders' meeting at*  
464 *which directors are elected, unless their terms are staggered pursuant to § 13.1-678, in which case the*  
465 *term shall expire at the applicable second or third annual shareholders' meeting.*

466 B. *The terms of all other directors expire at the next, or if the terms are staggered in accordance*  
467 *with § 13.1-678, at the applicable second or third, annual shareholders' meeting following their election*  
468 *unless their terms are staggered under § 13.1-678.*

469 C. *A decrease in the number of directors does not shorten an incumbent director's term.*

470 D. *The term of a director elected by the board of directors to fill a vacancy expires at the next*  
471 *shareholders' meeting at which directors are elected.*

472 E. *Despite the expiration of a director's term, he the director continues to serve until his the*  
473 *director's successor is elected and qualifies or until there is a decrease in the number of directors, if any.*

474 F. *Notwithstanding the foregoing provisions, the terms of the directors of a corporation registered*  
475 *under the Investment Company Act of 1940 shall expire according to, and otherwise be governed by,*  
476 *the provisions of the Investment Company Act of 1940.*

477 § 13.1-679. *Resignation of directors.*

478 A. *A director may resign at any time by delivering a written notice resignation to the board of*  
479 *directors; or its chairman, the president, or to the secretary of the corporation.*

480 B. *A resignation is effective when the notice resignation is delivered unless the notice resignation*  
481 *specifies a later effective date or an effective date determined upon the occurrence of one or more*  
482 *events. If a resignation is made effective at a later date, the board of directors may fill the pending*  
483 *vacancy before the effective date if the board of directors provides that the successor does not take*  
484 *office until the effective date. A resignation that is conditioned upon failing to receive a specified vote*  
485 *for election as a director may provide that it is irrevocable.*

486 C. *Any person who has resigned as a director of a corporation, or whose name is incorrectly on file*  
487 *with the Commission as a director of a corporation, may file a statement to that effect with the*  
488 *Commission.*

489 D. *Upon the resignation of a director, the corporation may file an amended annual report with the*



Commission indicating the resignation of the director and the successor in office, if any.

§ 13.1-682. Vacancy on board of directors.

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

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of shareholders, only the ~~holders~~ *shareholders* of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders *and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the board of 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 § 13.1-679 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.

§ 13.1-704. 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. 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 shareholders or any resolution adopted, before or after the event, by the shareholders, except an indemnity against (i) his willful misconduct, or (ii) a knowing violation of the criminal law. Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § 13.1-701. 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. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

D. 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 or her appearance as a witness in a proceeding at a time when he or she is not a party.

E. This article does not limit a corporation's power to ~~indemnify~~ *provide indemnity to*, advance or reimburse expenses ~~to incurred by~~, or provide or maintain insurance on behalf of an *agent or an* employee ~~or agent~~ who is not a director or officer.

§ 13.1-711. Restated articles of incorporation.

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

B. The restatement may include one or more new amendments to the articles. If the restatement includes a new amendment requiring shareholder approval, it shall be adopted and approved as provided in § 13.1-707.

C. If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth ~~the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:~~

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

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

3. Whether the restatement contains a new amendment to the articles ~~and, if it does not, that the board of directors adopted the restatement;~~

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



551 4. If the restatement includes a new amendment that provides for an exchange, reclassification, or  
552 cancellation of issued shares, provisions for implementing the amendment, which may be made  
553 dependent upon facts objectively ascertainable outside the articles of restatement in accordance with  
554 subsection L of § 13.1-604;

555 5. The date of the restatement's adoption;

556 6. If the restatement does not contain a new amendment to the articles, that the board of directors  
557 adopted the restatement;

558 47. If the restatement contains a new amendment to the articles not requiring shareholder approval,  
559 the information required by subdivision A 5 of § 13.1-710; and

560 58. If the restatement contains a new amendment to the articles requiring shareholder approval, the  
561 information required by subdivision A 6 of § 13.1-710.

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

566 F. The Commission may certify restated articles of incorporation *or amended and restated articles of*  
567 *incorporation* as the articles of incorporation currently in effect ~~without including the certificate~~  
568 ~~information required by subsection D.~~

569 § 13.1-718. Action on a plan of merger or share exchange.

570 A. In the case of a domestic corporation that is a party to a merger or share exchange:

571 1. The plan of merger or share exchange shall be adopted by the board of directors.

572 2. Except as provided in ~~subsection~~ *subsections F and G* of this section and in §§ 13.1-719 and  
573 13.1-719.1, after adopting the plan of merger or share exchange the board of directors shall submit the  
574 plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders  
575 a recommendation that the shareholders approve the plan, unless the board of directors makes a  
576 determination that because of conflicts of interest or other special circumstances it should not make such  
577 a recommendation, in which case the board of directors ~~must~~ *shall* transmit to the shareholders the basis  
578 for that determination.

579 B. The board of directors may condition its submission of the plan of merger or share exchange to  
580 the shareholders on any basis.

581 C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the  
582 approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not  
583 entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The  
584 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and  
585 ~~must~~ *shall* contain or be accompanied by a copy or summary of the plan. If the corporation is to be  
586 merged into an existing domestic or foreign corporation or eligible entity and its shareholders are to  
587 receive shares or other interests or the right to receive shares or other interests in the surviving  
588 corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of  
589 the articles of incorporation or organic document of that corporation or eligible entity. If the corporation  
590 is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to  
591 the merger and its shareholders are to receive shares or other interests or the right to receive shares or  
592 other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied  
593 by a copy or a summary of the articles of incorporation or organic document of the new domestic or  
594 foreign corporation or eligible entity.

595 D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B,  
596 require a greater vote, the plan of merger or share exchange to be authorized shall be approved by each  
597 voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by  
598 that voting group. The articles of incorporation may provide for a greater or lesser vote than that  
599 provided for in this subsection or a vote by separate voting groups so long as the vote provided for is  
600 not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the  
601 transaction at a meeting at which a quorum of the voting group exists.

602 E. Separate voting by voting groups is required:

603 1. On a plan of merger by each class or series of shares that:

604 a. Is to be converted under the plan of merger into shares, other securities, eligible interests,  
605 obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any  
606 combination of the foregoing; or

607 b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a  
608 proposed amendment to articles of incorporation, would require action by separate voting groups under  
609 § 13.1-708;

610 2. On a plan of share exchange, by each class or series of shares included in the exchange, with each  
611 class or series constituting a separate voting group; and

612 3. On a plan of merger or share exchange, if the voting group is entitled under the articles of



incorporation to vote as a voting group to approve a plan of merger or share exchange.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

2. Except for amendments permitted by § 13.1-706, its articles of incorporation will not be changed;

3. Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and rights immediately after the effective date of the merger or share exchange; and

4. With respect to shares of the surviving corporation in a merger that are entitled to vote unconditionally in the election of directors, the number of shares outstanding immediately after the merger, plus the number of shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of shares of the surviving corporation outstanding immediately before the merger.

G. *If a corporation has not yet issued shares and its articles of incorporation do not otherwise provide, its board of directors may adopt and approve a plan of merger or share exchange on behalf of the corporation without shareholder action.*

H. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

#### Article 15.

#### Appraisal Rights and Other Remedies.

§ 13.1-729. Definitions.

In this article:

"Affiliate" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive officer thereof. ~~For purposes of subdivision B 4 of § 13.1-730, a person is deemed to be an affiliate of its senior executive officers.~~

"Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

"Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered by §§ 13.1-734 through 13.1-740, includes the surviving entity in a merger.

"Fair value" means the value of the corporation's shares determined:

a. Immediately before the effectuation of the corporate action to which the shareholder objects;

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision A 5 of § 13.1-730.

"Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

*"Interested transaction" means a corporate action described in subsection A of § 13.1-730, other than a merger pursuant to § 13.1-719 or 13.1-719.1, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:*

1. *"Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.*

2. *"Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:*

a. *Was the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to*



674 *or less than that paid in connection with the corporate action;*

675 *b. Had the power, contractually or otherwise, to cause the appointment or election of 25 percent or*  
676 *more of the directors to the board of directors of the corporation; or*

677 *c. Was a senior executive officer or director of the corporation or a senior executive officer of any*  
678 *affiliate thereof, and that senior executive officer or director will receive, as a result of the corporate*  
679 *action, a financial benefit not generally available to other shareholders as such, other than:*

680 *(1) Employment, consulting, retirement, or similar benefits established separately and not as part of*  
681 *or in contemplation of the corporate action;*

682 *(2) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part*  
683 *of, the corporate action that are not more favorable than those existing before the corporate action or,*  
684 *if more favorable, that have been approved on behalf of the corporation in the same manner as is*  
685 *provided in § 13.1-691; or*

686 *(3) In the case of a director of the corporation who will, in the corporate action, become a director*  
687 *of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director*  
688 *that are provided on the same basis as those afforded by the acquiring entity generally to other*  
689 *directors of such entity or such affiliate.*

690 "Preferred shares" means a class or series of shares whose holders have preference over any other  
691 class or series of shares with respect to distributions.

692 "Record shareholder" means the person in whose name shares are registered in the records of the  
693 corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate  
694 on file with the corporation.

695 "Senior executive officer" means the chief executive officer, chief operating officer, chief financial  
696 officer and anyone in charge of a principal business unit or function.

697 "Shareholder" means both a record shareholder and a beneficial shareholder.

698 § 13.1-730. Right to appraisal.

699 A. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that  
700 shareholder's shares, in the event of any of the following corporate actions:

701 1. Consummation of a merger to which the corporation is a party (i) if shareholder approval is  
702 required for the merger by § 13.1-718 and the shareholder is entitled to vote on the merger, except that  
703 appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any  
704 class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a  
705 subsidiary and the merger is governed by § 13.1-719;

706 2. Consummation of a share exchange to which the corporation is a party as the corporation whose  
707 shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights  
708 shall not be available to any shareholder of the corporation with respect to any class or series of shares  
709 of the corporation that is not exchanged;

710 3. Consummation of a disposition of assets pursuant to § 13.1-724 if the shareholder is entitled to  
711 vote on the disposition;

712 4. An amendment of the articles of incorporation with respect to a class or series of shares that  
713 reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the  
714 corporation has the obligation or right to repurchase the fractional share so created; or

715 5. Any other amendment to the articles of incorporation, merger, share exchange or disposition of  
716 assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of  
717 directors.

718 B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through  
719 A 4 shall be limited in accordance with the following provisions:

720 1. Appraisal rights shall not be available for the holders of shares of any class or series of shares that  
721 is:

722 a. ~~Listed on the New York Stock Exchange or the American Stock Exchange or designated as a~~  
723 ~~national market system security on an interdealer quotation system by the National Association of~~  
724 ~~Securities Dealers, Inc.-A covered security under Section 18(b)(1)(A) or (B) of the federal Securities Act~~  
725 ~~of 1933, as amended; or~~

726 b. ~~Not so listed or designated, but~~ *Traded in an organized market and has at least 2,000 shareholders*  
727 *and the outstanding shares of such class or series have a market value of at least \$20 million, exclusive*  
728 *of the value of such shares held by the corporation's subsidiaries, senior executive officers executives,*  
729 *directors and beneficial shareholders owning more than 10 percent of such shares; or*

730 c. *Issued by an open end management investment company registered with the Securities and*  
731 *Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option*  
732 *of the holder at net asset value.*

733 2. The applicability of subdivision 1 of this subsection shall be determined as of:

734 a. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at,  
735 the meeting of shareholders to act upon the corporate action requiring appraisal rights; or



b. The day before the effective date of such corporate action if there is no meeting of shareholders.  
 3. Subdivision 1 of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision 1 of this subsection at the time the corporate action becomes effective.

4. Subdivision 1 of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares where:

a. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(1) Is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(2) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

b. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive officer or director of the corporation or a senior executive officer of any affiliate thereof, and that senior executive officer or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the manner as is provided in §13.1-691; or

(3) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

5. For the purposes of subdivision 4 of this subsection only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group *the corporate action is an interested transaction.*

C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

D. A shareholder may not challenge a completed corporate action described in subsection A, unless such corporate action:



797 1. Was not effectuated in accordance with the applicable provisions of Articles 11 (§ 13.1-705 et  
 798 seq.), 12 (§ 13.1-715.1 et seq.) or 13 (§ 13.1-723 et seq.) of this chapter or the corporation's articles of  
 799 incorporation, bylaws or board of directors' resolution authorizing the corporate action; or

800 2. Was procured as a result of fraud or material misrepresentation.

801 § 13.1-732. Notice of appraisal rights.

802 A. If ~~proposed~~Where any corporate action described specified in subsection A of § 13.1-730 is to be  
 803 submitted to a vote at a shareholders' meeting, the meeting notice shall state that the corporation has  
 804 concluded that shareholders are, are not or may be entitled to assert appraisal rights under this article.

805 If the corporation concludes that appraisal rights are or may be available, a copy of this article and a  
 806 statement of the corporation's position as to the availability of appraisal rights shall accompany the  
 807 meeting notice sent to those record shareholders entitled to exercise appraisal rights.

808 B. In a merger pursuant to § 13.1-719, the parent corporation shall notify in writing all record  
 809 shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became  
 810 effective. Such notice shall be sent within 10 days after the corporate action became effective and  
 811 include the materials described in § 13.1-734.

812 C. Where any corporate action specified in subsection A of § 13.1-730 is to be approved by written  
 813 consent of the shareholders pursuant to § 13.1-657:

814 1. Written notice that appraisal rights are, are not, or may be available must be given to each  
 815 record shareholder from whom a consent is solicited at the time consent of such shareholder is first  
 816 solicited and, if the corporation has concluded that appraisal rights are or may be available, must be  
 817 accompanied by a copy of this article; and

818 2. Written notice that appraisal rights are, are not, or may be available must be delivered together  
 819 with the notice to nonconsenting and nonvoting shareholders required by subsections E and F of  
 820 § 13.1-657, may include the materials described in § 13.1-734, and, if the corporation has concluded  
 821 that appraisal rights are or may be available, must be accompanied by a copy of this article.

822 D. Where corporate action described in subsection A of § 13.1-730 is proposed, or a merger  
 823 pursuant to § 13.1-719 is effected, the notice referred to in subsection A or C, if the corporation  
 824 concludes that appraisal rights are or may be available, and in subsection B shall be accompanied by:

825 1. The annual financial statements specified in subsection A of § 13.1-774 of the corporation that  
 826 issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16  
 827 months before the date of the notice and shall comply with subsection B of § 13.1-774; provided that, if  
 828 such annual financial statements are not reasonably available, the corporation shall provide reasonably  
 829 equivalent financial information; and

830 2. The latest available quarterly financial statements of such corporation, if any.

831 E. The right to receive the information described in subsection D may be waived in writing by a  
 832 shareholder before or after the corporate action.

833 § 13.1-733. Notice of intent to demand payment.

834 A. If ~~proposed~~a corporate action requiring appraisal rights under specified in subsection A of  
 835 § 13.1-730 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert  
 836 appraisal rights with respect to any class or series of shares:

837 1. ~~Shall~~Must deliver to the corporation before the vote is taken written notice of the shareholder's  
 838 intent to demand payment if the proposed action is effectuated; and

839 2. ~~Shall~~Must not vote, or cause or permit to be voted, any shares of such class or series in favor of  
 840 the proposed action.

841 B. If a corporate action specified in subsection A of § 13.1-730 is to be approved by less than  
 842 unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any  
 843 class or series of shares may not execute a consent in favor of the proposed action with respect to that  
 844 class or series of shares.

845 C. A shareholder who ~~does not~~ fails to satisfy the requirements of subsection A or subsection B is  
 846 not entitled to payment under this article.

847 § 13.1-734. Appraisal notice and form.

848 A. If proposed corporate action requiring appraisal rights under § 13.1-730 becomes effective, the  
 849 corporation shall deliver a written appraisal notice and form required by subdivision B 1 to all  
 850 shareholders who satisfied the requirements of § 13.1-733. In the case of a merger under § 13.1-719, the  
 851 parent corporation shall deliver a written appraisal notice and form to all record shareholders who may  
 852 be entitled to assert appraisal rights.

853 B. The appraisal notice shall be sent no earlier than the date the corporate action specified in  
 854 subsection A of § 13.1-730 became effective and no later than 10 days after such date and shall:

855 1. Supply a form that (i) specifies the first date of the first any announcement to shareholders made  
 856 prior to the date the corporate action became effective of the principal terms of the proposed corporate  
 857 action and, (ii) if such announcement was made, requires the shareholder asserting appraisal rights  
 858 certify (+) whether or not beneficial ownership of those shares for which appraisal rights are asserted was



acquired before that date, and ~~that~~ (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

2. State:

a. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision 2 b of this subsection;

b. A date by which the corporation must receive the form which date may not be fewer than 40 nor more than 60 days after the date the subsection A appraisal notice and form were sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

c. The corporation's estimate of the fair value of the shares;

d. That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subdivision 2 b of this subsection, the number of shareholders who returned the ~~forms~~ form by the specified date and the total number of shares owned by them; and

e. The date by which the notice to withdraw under § 13.1-735.1 must be received, which date must be within 20 days after the date specified in subdivision 2 b of this subsection; and

3. Be accompanied by a copy of this article.

§ 13.1-735.1. Perfection of rights; right to withdraw.

A. A shareholder who receives notice pursuant to § 13.1-734 and who wishes to exercise appraisal rights must ~~certify on~~ complete, sign, and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision B 2 b of § 13.1-734. If the form requires the shareholder to certify whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to ~~§ 13.1-738~~. If a subdivision B 1 of § 13.1-734, and the shareholder fails to make ~~this~~ the certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 13.1-738. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision B 2 b of ~~§ 13.1-734~~. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the ~~executed~~ signed form, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection B.

B. A shareholder who has complied with subsection A may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision B 2 e of § 13.1-734. A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

C. A shareholder who does not ~~execute~~ sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection B of § 13.1-734, shall not be entitled to payment under this article.

§ 13.1-737. Payment.

A. Except as provided in § 13.1-738, within 30 days after the form required by subsection B 2 b of § 13.1-734 is due, the corporation shall pay in cash to those shareholders who complied with subsection A of § 13.1-735.1 the amount the corporation estimates to be the fair value of their shares plus interest.

B. The payment to each shareholder pursuant to subsection A shall be accompanied by:

1. ~~Financial~~The (i) annual financial statements specified in subsection A of § 13.1-774 of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year which shall as of a date ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim and shall comply with subsection B of § 13.1-774; provided that, if such annual financial statements are not available, the corporation shall provide reasonably equivalent information, and (ii) the latest available quarterly financial statements of such corporation, if any;

2. A statement of the corporation's estimate of the fair value of the shares, which estimate must shall equal or exceed the corporation's estimate given pursuant to subdivision B 2 c of § 13.1-734; and

3. A statement that shareholders described in subsection A have the right to demand further payment under § 13.1-739 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

§ 13.1-738. After-acquired shares.

A. A corporation may elect to withhold payment required by § 13.1-737 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant



920 to subdivision B 1 of § 13.1-734.

921 B. If the corporation elected to withhold payment under subsection A, it ~~must~~ *shall*, within 30 days  
922 after the form required by subdivision B 2 b of § 13.1-734 is due, notify all shareholders who are  
923 described in subsection A:

924 1. Of the information required by subdivision B 1 of § 13.1-737;

925 2. Of the corporation's estimate of fair value pursuant to subdivision B 2 of § 13.1-737 and its offer  
926 to pay such value plus interest;

927 3. That they may accept the corporation's estimate of fair value plus interest in full satisfaction of  
928 their demands or demand for appraisal under § 13.1-739;

929 4. That those shareholders who wish to accept such offer must so notify the corporation of their  
930 acceptance of the corporation's offer within 30 days after receiving the offer; and

931 5. That those shareholders who do not satisfy the requirements for demanding appraisal under  
932 § 13.1-739 shall be deemed to have accepted the corporation's offer.

933 C. Within 10 days after receiving a shareholder's acceptance pursuant to subsection B, the  
934 corporation shall pay in cash the amount it offered under subdivision B 2 to each shareholder who  
935 agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

936 D. Within 40 days after sending the notice described in subsection B, the corporation shall pay in  
937 cash the amount it offered to pay under subdivision B 2 to each shareholder described in subdivision B  
938 5.

939 § 13.1-741.1. *Limitations on other remedies for fundamental transactions.*

940 A. *Except as provided in subsection B, the legality of a proposed or completed corporate action*  
941 *described in subsection A of § 13.1-730 may not be contested, nor may the corporate action be enjoined,*  
942 *set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have*  
943 *approved the corporate action.*

944 B. *Subsection A does not apply to a corporate action that:*

945 1. *Was not authorized and approved in accordance with the applicable provisions of:*

946 a. *Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), or Article 13 (§ 13.1-723 et seq.);*

947 b. *The articles of incorporation or bylaws, or*

948 c. *The resolutions of the board of directors authorizing the corporate action;*

949 2. *Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact*  
950 *necessary to make statements made, in light of the circumstances in which they were made, not*  
951 *misleading;*

952 3. *Is an interested transaction, unless it has been authorized, approved or ratified by the board of*  
953 *directors in the same manner as is provided in subsection B of § 13.1-691 and has been authorized,*  
954 *approved or ratified by the shareholders in the same manner as is provided in subsection C of*  
955 *§ 13.1-691 as if the interested transaction were a director's conflict of interests transaction; or*

956 4. *Is approved by less than unanimous consent of the voting shareholders pursuant to § 13.1-657 if:*

957 a. *The challenge to the corporate action is brought by a shareholder who did not consent and as to*  
958 *whom notice of the approval of the corporate action was not effective at least 10 days before the*  
959 *corporate action was effected; and*

960 b. *The proceeding challenging the corporate action is commenced within 10 days after notice of the*  
961 *approval of the corporate action is effective as to the shareholder bringing the proceeding.*

962 § 13.1-746. Known claims against dissolved corporation.

963 A. A dissolved corporation may dispose of the known claims against it by following the procedure  
964 described in this section.

965 B. The dissolved corporation shall deliver to each of its known claimants written notice of the  
966 dissolution at any time after its effective date. The written notice shall:

967 1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

968 2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is  
969 admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of  
970 indebtedness;

971 3. Provide a mailing address where a claim may be sent;

972 4. State the deadline, which may not be fewer than 120 days from the effective date of the written  
973 notice, by which confirmation of the claim must be delivered to the dissolved corporation; and

974 5. State that, except to the extent that any claim is admitted, the claim will be barred if written  
975 confirmation of the claim is not delivered by the deadline.

976 C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

977 1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection  
978 B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by  
979 the deadline; or

980 2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted,  
981 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.

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 exercise of any discretionary right of the claimant thereunder.*

E. If a liability exists but the full extent of any damages is 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.

§ 13.1-746.1. 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 is excluded from the definition of a claim in subsection D of § 13.1-746 and (ii) publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.*

B. ~~The notice shall:~~

~~1. 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; The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.~~

~~2B. The notice shall:~~

~~1. Describe the information that must is required to be included in a claim and provide a mailing address where the claim may be sent; and~~

~~32. 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 publishes a newspaper provides notice of its dissolution in accordance with subsection B 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 publication date of the newspaper on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-746;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on;

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 13.1-746; provided that in the case of a known claim the corporation delivered notice of its dissolution in accordance with clause (i) of subsection A of this section.

D. A claim that is not barred by subsection C of § 13.1-746 or subsection C of § 13.1-746.1 may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-746.2, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

§ 13.1-747. 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 shareholder of a corporation that is not a public corporation if it is established that:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; or

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

d. The corporate assets are being misapplied or wasted;

2. In a proceeding by a creditor if it is established that:



1043 a. The creditor's claim has been reduced to judgment, the execution on the judgment returned  
1044 unsatisfied and the corporation is insolvent; or

1045 b. The corporation has admitted in writing that the creditor's claim is due and owing and the  
1046 corporation is insolvent;

1047 3. In a proceeding by the corporation to have its voluntary dissolution continued under court  
1048 supervision;

1049 4. *In a proceeding by a shareholder if the corporation has abandoned its business and has failed*  
1050 *within a reasonable time to liquidate and distribute its assets and terminate its corporate existence*

1051 5. Upon application by the board of directors when it is established that circumstances make it  
1052 impossible to obtain a representative vote by shareholders on the question of dissolution and that the  
1053 continuation of the business of the corporation is not in the interest of the shareholders but it is in their  
1054 interest that the assets and business be liquidated; or

1055 56. When the Commission has instituted a proceeding for the involuntary termination of corporate  
1056 existence and entered an order finding that the corporate existence of the corporation should be  
1057 terminated but that liquidation of its business and affairs should precede the entry of an order of  
1058 termination of corporate existence.

1059 B. The circuit court in the city or county named in subsection C shall have full power to liquidate  
1060 the assets and business of the corporation at any time after the termination of corporate existence,  
1061 pursuant to the provisions of this article upon the application of any person, for good cause, with regard  
1062 to any assets or business that may remain. The jurisdiction conferred by this clause may also be  
1063 exercised by any such court in any city or county where any property may be situated whether of a  
1064 domestic or a foreign corporation that ceased to exist.

1065 C. Venue for a proceeding brought under this section lies in the city or county where the  
1066 corporation's principal office is or was located, or, if none in the Commonwealth, where its registered  
1067 office is or was last located.

1068 D. It is not necessary to make directors or shareholders parties to a proceeding to be brought under  
1069 this section unless relief is sought against them individually.

1070 E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a  
1071 receiver or custodian pendente lite with such powers and duties as the court may direct, take other  
1072 action required to preserve the corporate assets wherever located, and carry on the business of the  
1073 corporation until a full hearing can be held.

1074 § 13.1-748. Receivership or custodianship.

1075 A. ~~A~~Unless an election to purchase has been filed under § 13.1-749.1, a court in a judicial  
1076 proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and  
1077 liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs  
1078 of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any  
1079 interested persons designated by the court, before appointing a receiver or custodian. The court  
1080 appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property  
1081 wherever located.

1082 B. The court may appoint an individual, a domestic corporation, or a foreign corporation authorized  
1083 to transact business in the Commonwealth, as a receiver or custodian. The court may require the  
1084 receiver or custodian to post bond, with or without sureties, in an amount the court directs.

1085 C. The court shall describe the powers and duties of the receiver or custodian in its appointing order,  
1086 which may be amended from time to time. Among other powers:

1087 1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located,  
1088 at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as  
1089 receiver of the corporation in all courts of the Commonwealth; and

1090 2. The custodian may exercise all of the powers of the corporation, through or in place of its board  
1091 of directors or officers, to the extent necessary to manage the affairs of the corporation in the best  
1092 interest of its shareholders and creditors.

1093 D. The court during a receivership may redesignate the receiver a custodian, and during a  
1094 custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the  
1095 corporation, its shareholders, and creditors.

1096 E. The court from time to time during the receivership or custodianship may order compensation  
1097 paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's  
1098 counsel from the assets of the corporation or proceeds from the sale of the assets.

1099 § 13.1-749.1. Election to purchase in lieu of dissolution.

1100 A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1  
1101 of § 13.1-747 to dissolve a corporation ~~that is not a public corporation~~, the corporation may elect or, if  
1102 it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning  
1103 shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable  
1104 unless the court determines that it is equitable to set aside or modify the election.



B. An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under subdivision A 1 of § 13.1-747 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and ~~must~~ *shall* advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision A 1 of § 13.1-747 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the petitioner's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

C. If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon application of any party, shall stay the proceedings under subdivision A 1 of § 13.1-747 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision A 1 of § 13.1-747 was filed or as of such other date as the court deems appropriate under the circumstances. In determining the fair value, the court may, in its discretion, select an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such appraisal to the parties, to the corporation, or both, as the equities may appear to the court.

E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision A 1 b or d of § 13.1-747, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

F. Upon entry of an order under subsection C or E, the court shall dismiss the petition to dissolve the corporation under subdivision A 1 of § 13.1-747 and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court, which shall be enforceable in the same manner as any other judgment.

G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt a proposal to dissolve pursuant to § 13.1-742, in which event articles of dissolution must be filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of this article, and the order entered pursuant to subsection E shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection E and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

H. Any payment by the corporation pursuant to an order under subsection C or E, other than an award of fees and expenses pursuant to subsection E, is subject to the provisions of § 13.1-653.