

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 6.1-225.27, 13.1-801 through 13.1-804, 13.1-806 through 13.1-810, 13.1-811, 13.1-812, 13.1-813, 13.1-815, 13.1-815.1, 13.1-816, 13.1-819, 13.1-820, 13.1-822 through 13.1-844, 13.1-845, 13.1-846, 13.1-847, 13.1-848, 13.1-849, 13.1-850, 13.1-852, 13.1-852.1, 13.1-853, 13.1-854, 13.1-855, 13.1-857 through 13.1-862, 13.1-864 through 13.1-871, 13.1-872, 13.1-874 through 13.1-878, 13.1-879.1 through 13.1-883, 13.1-885, 13.1-886, 13.1-887.1, 13.1-888, 13.1-889, 13.1-891, 13.1-892, 13.1-893, 13.1-894 through 13.1-897, 13.1-898.2 through 13.1-900, 13.1-902, 13.1-904, 13.1-906, 13.1-907, 13.1-908, 13.1-909 through 13.1-917, 13.1-919 through 13.1-928.1, 13.1-929 through 13.1-934, 13.1-936, 13.1-936.1, 13.1-939, and 55-532 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 13.1-804.1, 13.1-810.1, 13.1-844.1, 13.1-847.1, 13.1-871.1, 13.1-897.1, 13.1-908.1, 13.1-908.2, 13.1-908.3, and 13.1-935.1 and by adding in Article 7.1 of Chapter 10 of Title 13.1 a section numbered 13.1-852.2 and by adding in Article 10 of Chapter 10 of Title 13.1 a section numbered 13.1-893.1, and to repeal §§ 13.1-890, 13.1-898, and 13.1-898.1 of the Code of Virginia, relating to the Virginia Nonstock Corporation Act.

[S 1286]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-225.27, 13.1-801 through 13.1-804, 13.1-806 through 13.1-810, 13.1-811, 13.1-812, 13.1-813, 13.1-815, 13.1-815.1, 13.1-816, 13.1-819, 13.1-820, 13.1-822 through 13.1-844, 13.1-845, 13.1-846, 13.1-847, 13.1-848, 13.1-849, 13.1-850, 13.1-852, 13.1-852.1, 13.1-853, 13.1-854, 13.1-855, 13.1-857 through 13.1-862, 13.1-864 through 13.1-871, 13.1-872, 13.1-874 through 13.1-878, 13.1-879.1 through 13.1-883, 13.1-885, 13.1-886, 13.1-887.1, 13.1-888, 13.1-889, 13.1-891, 13.1-892, 13.1-893, 13.1-894 through 13.1-897, 13.1-898.2 through 13.1-900, 13.1-902, 13.1-904, 13.1-906, 13.1-907, 13.1-908, 13.1-909 through 13.1-917, 13.1-919 through 13.1-928.1, 13.1-929 through 13.1-934, 13.1-936, 13.1-936.1, 13.1-939, and 55-532 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-804.1, 13.1-810.1, 13.1-844.1, 13.1-847.1, 13.1-871.1, 13.1-897.1, 13.1-908.1, 13.1-908.2, 13.1-908.3, and 13.1-935.1 and by adding in Article 7.1 of Chapter 10 of Title 13.1 a section numbered 13.1-852.2 and by adding in Article 10 of Chapter 10 of Title 13.1 a section numbered 13.1-893.1 as follows:

§ 6.1-225.27. Voluntary merger.

A. A credit union organized under this chapter may merge, with the approval of the Commission, with one or more other credit unions, state or federal. In any case in which the surviving credit union will be a Virginia state-chartered credit union, a merger application, accompanied by an application fee of \$300, shall be filed with the Commission. The Commission shall approve the application if the Commission finds that:

1. The field of membership of the credit union which is proposed to result from the merger satisfies the requirements of § 6.1-225.23 B;

2. The plan of merger will promote the best interests of the members of the credit unions; and

3. The members of the merging credit unions have approved the plan of merger in accordance with applicable laws and regulations. Notwithstanding ~~subdivision A~~ *subsection D* of § 13.1-895, the members of a Virginia credit union may authorize a plan of merger by vote of at least a majority of all votes cast thereon at an annual or special meeting at which a quorum is present. Notwithstanding the terms of § 13.1-895, in a merger where a Virginia state-chartered credit union will be the resulting credit union, the adoption of the plan of merger by the board of directors of that credit union shall be sufficient approval of the plan, and approval of the plan of merger by the members of that credit union shall not be required. Notice of the meeting may be given in a manner prescribed in the articles of incorporation or bylaws, notwithstanding the terms of § 13.1-842 relating to the manner of notice. A federal credit union merging with a state credit union may give notice to its members as prescribed by federal regulation.

B. 1. If the Commission finds that the requirements of subsection A of this section have been met and all required fees have been paid, it shall approve the merger and issue a certificate of merger, which shall be admitted to record in its office and in the office for the recording of deeds in the city or county in which the registered office of each credit union is located. However, no such further recordation shall be required in the City of Richmond, County of Chesterfield or the County of Henrico.

2. Upon the issuance of the certificate of merger the provisions of § 13.1-897, mutatis mutandis, shall

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57 become effective.

58 C. For the purposes of this section, a member entitled to vote may vote in person or, unless the
59 articles of incorporation or bylaws otherwise provide, by proxy. A member may appoint a proxy to vote
60 or otherwise act for him by signing an appointment form. An appointment of a proxy becomes effective
61 when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is
62 valid for eleven months unless a different period is expressly provided in the appointment form or the
63 appointment is revoked by the member.

64 § 13.1-801. Short title.

65 This chapter shall be known as the "Virginia Nonstock Corporation Act *or the "Act."*

66 § 13.1-802. Reservation of power to amend or repeal.

67 The General Assembly of Virginia shall have power to amend or repeal all or part of this ~~chapter Act~~
68 at any time, and all domestic and foreign corporations subject to this ~~chapter Act~~ shall be governed by
69 the amendment or repeal.

70 § 13.1-803. Definitions.

71 As used in this chapter, ~~unless the context otherwise requires, the term Act:~~

72 "Articles of incorporation" means all documents constituting, at any particular time, the charter of a
73 corporation. It includes the original charter issued by the General Assembly, a court or the Commission
74 and all amendments including certificates of merger, consolidation or correction. When the articles of
75 incorporation have been restated pursuant to any articles of *restatement*, amendment, *domestication*, or
76 merger, it includes only the restated articles of incorporation without the accompanying articles of
77 *restatement*, amendment, *domestication*, or merger.

78 "Board of directors" means the group of persons vested with the management of the business of the
79 corporation irrespective of the name by which such group is designated, and "director" means a member
80 of the board of directors.

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

83 "Commission" means the State Corporation Commission of Virginia.

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

87 "Corporation" or "domestic corporation" means a corporation not ~~issuing~~ *authorized by law to issue*
88 shares of stock, irrespective of the nature of ~~its~~ *the* business to be transacted, organized under this
89 ~~chapter Act~~ or existing pursuant to the laws of ~~this the~~ Commonwealth on January 1, 1986, or ~~merged~~
90 ~~with a corporation of this Commonwealth in such manner as thereby to that, by virtue of articles of~~
91 ~~incorporation, amendment, or merger, has become a domestic corporation of this the~~ Commonwealth,
92 even though also ~~remaining a corporation of another state being a corporation organized under laws~~
93 ~~other than the laws of the Commonwealth or that has become a domestic corporation of the~~
94 Commonwealth pursuant to Article 11.1 (§ 13.1-898.2 et seq.). of this Act.

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

97 "Disinterested director" means a director who, at the time action is to be taken under § 13.1-871,
98 13.1-878, or 13.1-880, does not have (i) a financial interest in a matter that is the subject of such
99 action or (ii) a familial, financial, professional, employment, or other relationship with a person who
100 has a financial interest in the matter, either of which would reasonably be expected to affect adversely
101 the objectivity of the director when participating in the action, and if the action is to be taken under
102 § 13.1-878 or 13.1-880, is also not a party to the proceeding. The presence of one or more of the
103 following circumstances shall not by itself prevent a person from being a disinterested director: (a)
104 nomination or election of the director to the current board by any person, acting alone or participating
105 with others, who is so interested in the matter or (b) service as a director of another corporation of
106 which an interested person is also a director.

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

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

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

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

113 "Domestic stock corporation" has the same meaning as "domestic corporation" as specified in
114 § 13.1-603.

115 "Effective date of notice" is defined in § 13.1-810.

116 "Electronic transmission" means any form of communication, not directly involving the physical
117 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient

thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section. For purposes of §§ 13.1-841 and 13.1-865, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock corporation.

"Eligible interests" means interests or shares.

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

"Entity" includes corporation and any domestic or foreign corporation; any domestic or foreign stock corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, any domestic or foreign unincorporated entity; any estate or trust; any and any state, the United States, and any foreign government.

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

"Foreign corporation" means a corporation not issuing authorized by law to issue shares and, organized under laws other than the laws of this the Commonwealth.

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

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

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

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

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

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

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

"Includes" denotes a partial definition.

"Individual" includes the estate of an incapacitated or deceased individual means a natural person.

"Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

"Interest" means either or both of the following rights under the organic law of a foreign or domestic unincorporated entity:

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

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

"Means" denotes an exhaustive definition.

"Member" means one having a membership rights interest in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

"Membership interest" means the interest of a member in a domestic or foreign corporation, including voting and all other rights associated with membership.

"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 this 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 this the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of this chapter Act.

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

"Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this chapter Act on which a corporation determines the identity of its members and their membership interests for purposes of this chapter Act. The determination shall be made as of the close of business at the principal office of

179 *the corporation on the record date unless another time for doing so is specified when the record date is*
 180 *fixed.*

181 *"Shares" has the same meaning as specified in § 13.1-603.*

182 *"State" when referring to a part of the United States, includes any state or commonwealth, any*
 183 *territory or insular possession of the United States, and any of their agencies and governmental*
 184 *subdivisions.*

185 *"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.*

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

188 *"United States" includes any district, authority, bureau, commission, department, or any other agency*
 189 *of the United States.*

190 *"Voting group" means all members of one or more classes that under the articles of incorporation or*
 191 *this chapter Act are entitled to vote and be counted together collectively on a matter at a meeting of*
 192 *members. All members entitled by the articles of incorporation or this chapter Act to vote generally on*
 193 *the matter are for that purpose a single voting group.*

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

195 § 13.1-804. Filing requirements.

196 A. A document shall satisfy the requirements of this section, and of any other section that adds to or
 197 varies these requirements, to be entitled to be filed with the Commission.

198 B. The document shall be one that this chapter Act requires or permits to be filed with the
 199 Commission.

200 C. The document shall contain the information required by this chapter Act. It may contain other
 201 information as well.

202 D. The document shall be typewritten or printed *or, if electronically transmitted, shall be in a format*
 203 *that can be retrieved or reproduced in typewritten or printed form.* The typewritten or printed portion
 204 shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be
 205 filed. In every case, information in the document shall be legible and the document shall be capable of
 206 being reformatted and reproduced in copies of archival quality.

207 E. The document shall be in the English language. A corporate name need not be in English if
 208 written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated
 209 by the official having custody of corporate records in the state or country under whose law the
 210 corporation is incorporated, which are required of foreign corporations need not be in English if
 211 accompanied by a reasonably authenticated English translation.

212 F. The document shall be executed in the name of the corporation:

213 1. By the chairman or any vice-chairman of the board of directors, ~~or~~ the president, or any other of
 214 its officers authorized to act on behalf of the corporation;

215 2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

216 3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that
 217 fiduciary.

218 G. Any annual report required to be filed by § 13.1-936 shall be executed in the name of the
 219 corporation by an officer or director listed in the report.

220 H. The person executing the document shall sign it and state beneath or opposite *his* signature his
 221 name and the capacity in which he signs. Any signature may be a facsimile. The document may but
 222 need not contain: ~~1. The a corporate seal; 2. An, attestation by the secretary or an assistant secretary; 3.~~
 223 ~~An, acknowledgment, or verification; or proof.~~

224 I. If, pursuant to any provision of this chapter Act, the Commission has prescribed a mandatory form
 225 for the document, the document shall be in or on the prescribed form.

226 J. The document shall be delivered to the Commission for filing and shall be accompanied by the
 227 required filing fee, and any charter or entrance fee or registration fee required by this chapter ~~or by~~
 228 ~~§ 13.1-936.1 Act.~~

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

232 L. *Whenever a provision of this Act permits any of the terms of a plan or a filed document to be*
 233 *dependent on facts objectively ascertainable outside the plan or filed document, the following provisions*
 234 *apply:*

235 1. *The plan or filed document shall specify the nationally recognized news or information medium in*
 236 *which the facts may be found or otherwise state the manner in which the facts can be objectively*
 237 *ascertained. The manner in which the facts will operate upon the terms of the plan or filed document*
 238 *shall be set forth in the plan or filed document.*

239 2. *The facts may include:*

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of or actions taken under an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10 (§ 13.1-884 et seq.) or 11 (§ 13.1-894.1 et seq.) of this Act; and

b. "Plan" means a plan of merger.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. The registered office of any entity required in a filed document;

c. The registered agent of any entity required in a filed document;

d. The number of members and designation of each class of members;

e. The effective date of a filed document; and

f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document and that fact is not objectively ascertainable by reference to a source described in subdivision 2a or to a document that is a matter of public record, or if the affected members have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the members.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

§ 13.1-804.1. Filing with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in § 13.1-804, 13.1-819, 13.1-896, or 13.1-904, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may, without action by the board of directors or members to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute, put into effect and carry out the plan and decrees of the court relative thereto (i) through an amendment or amendments to the corporation's articles of incorporation containing terms and conditions permitted by this Act, (ii) through a plan of merger, or (iii) through dissolution.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, or dissolution, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;

2. The text of each amendment, plan of merger, or dissolution approved by the court;

3. The date of the court's order or decree approving the articles of amendment, plan of merger, or dissolution;

4. The title of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

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

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 13.1-806. Effective time and date of document.

A. A certificate issued by the Commission ~~becomes~~ is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the certificate shall become effective at the *earlier of the time and date so specified, so long as the effective*

date is ~~not more than fifteen days or 11:59 p.m. on the 15th day~~ after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall ~~become~~ *be* effective when accepted for filing unless otherwise provided for in this ~~chapter~~ Act.

B. Notwithstanding the provisions of subsection A of this section, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A of this section, for purposes of §§ 13.1-829 and 13.1-924, any certificate that has a delayed effective date shall be deemed to ~~become~~ *be* effective when the certificate is issued.

§ 13.1-807. 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 ~~(i)~~ contain an ~~incorrect statement or 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 describe the articles to be corrected, including their effective date, and that correct the ~~incorrect statement or defective execution~~ The name of the corporation prior to filing; and

2. By filing the articles of correction with the Commission A description of the articles to be corrected, including their effective date;

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

§ 13.1-808. Evidentiary effect of copy of filed document.

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk ~~or an assistant clerk~~ of the Commission ~~or a member of the staff of the office of the clerk, which in either case may be in facsimile~~, and the seal of the Commission, ~~which may be in facsimile~~, is conclusive evidence that the document has been admitted to the records of the Commission.

§ 13.1-809. Certificate of good standing.

A. Anyone may apply to the Commission ~~for~~ to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in ~~this~~ the Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in ~~this~~ the Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the ~~laws~~ law of ~~this~~ the Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in ~~this~~ the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in ~~this~~ the Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this ~~chapter~~ or Title 12.1 Act have been paid;

2. An annual report required by § 13.1-936 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in

good standing in ~~this the~~ Commonwealth.

§ 13.1-810. Notice.

For purposes of this ~~chapter~~ Act, *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, telegraph, teletype, voice mail or other form of wire or wireless communication; or by mail or private carrier 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 notice is intended to be given.*

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

D. Written notice to a domestic ~~corporation~~ or a foreign corporation, authorized to transact business in ~~this the~~ Commonwealth, may be addressed to its registered agent at its registered office or to 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 ~~subsections B and subsection C of this section~~, written notice, if in a comprehensible form, ~~becomes~~ *is* effective at the earliest of the following:

1. When received;

2. Five days after its deposit in the United States mail; ~~as evidenced by the postmark~~, if mailed postpaid and correctly addressed; or

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 ~~becomes~~ *is* effective when communicated if communicated in a comprehensible manner.

G. ~~If~~ *When* this ~~chapter~~ Act 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~~ Act, those requirements govern.

H. *Without limiting the manner by which notice otherwise may be given effectively to members, any notice to members given by the corporation under any provision of this Act, the articles of incorporation, or the bylaws, shall be effective if given by a form of electronic transmission consented to by the member to whom the notice is given. Any such consent shall be revocable by the member 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 other person responsible for the giving of notice, provided, however, that 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 member has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the member of such specific posting when such notice is directed to the record address of the member or to such other address at which the member 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 member. An affidavit of the secretary or an assistant secretary 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.*

§ 13.1-810.1. Number of members.

A. For purposes of this Act, the following identified as a member in a corporation's current record of members constitutes one member:

1. Two or more co-owners;

2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or

3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this Act, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

§ 13.1-811. Penalty for signing false documents.

A. It shall be unlawful for any person to sign a document which *he* knows is false in any material respect with intent that the document be delivered to the Commission for filing. ~~Any person~~

B. *Anyone* who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 13.1-812. Unlawful to transact or offer to transact business as a corporation unless authorized.

It shall be unlawful for any person, ~~firm or association~~ to transact business in ~~this the~~ Commonwealth as a corporation or to offer or advertise to transact business in ~~this the~~ Commonwealth as a corporation unless the alleged corporation is either a ~~Virginia~~ domestic corporation or a foreign corporation authorized to transact business in ~~Virginia the Commonwealth~~. Any person who, ~~individually or as a member of a firm or association,~~ violates this section shall be guilty of a Class 1 misdemeanor.

§ 13.1-813. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a ~~rehearing~~ *hearing* with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a member or director, filed with the Commission and the corporation within ~~ten~~ 10 days after the effective date of the certificate, in which the member or director asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the member or director, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without ~~Virginia the Commonwealth~~ shall have jurisdiction to enjoin or delay the holding of any meeting of directors or members for the purpose of authorizing or consummating any amendment, merger ~~or dissolution~~, *domestication, or termination of corporate existence*, or the execution or filing with the Commission of any articles or other documents for such purpose, except *pursuant to subsection C of § 13.1-845 or for fraud*. No court within or without ~~Virginia the Commonwealth~~, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect *the* filing fees, ~~the~~ charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this ~~chapter~~ *Act*, except the report required by § 13.1-936, a statement of change pursuant to § 13.1-834 or 13.1-926, and a statement of resignation pursuant to § 13.1-835 or 13.1-927, until all fees, charges, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this ~~chapter~~ *Act* or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is prior to the due date of the corporation's annual registration payment in any year. Except as hereinafter provided, the issuance of a certificate of termination of corporate existence pursuant to § 13.1-913 shall not have the effect of releasing any obligation that has accrued in favor of ~~this the~~ Commonwealth on account of such assessment.

Any domestic corporation that has ceased to exist *in the Commonwealth* because of the issuance of a certificate of termination of corporate existence or certificate of incorporation surrender or any foreign corporation that has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § 13.1-936 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation that has merged, effective prior to its annual report due date pursuant to subsection C of § 13.1-936 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and canceling the registration fee assessments ~~above~~ *specified remaining in this section that remain* unpaid. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-815.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter *or upon domestication*, shall pay a \$50 fee into the state treasury, and every foreign corporation ~~without capital stock~~ shall pay \$50 into the state treasury for its certificate of authority to conduct its affairs in ~~this the~~ Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact

business in ~~this~~ *the* Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. If no charter or entrance fee has been heretofore paid to ~~this~~ *the* Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

§ 13.1-816. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, *except as provided in § 12.1-21.2*:

1. For filing any one of the following, the fee shall be \$25:

a. Articles of incorporation, domestication, or incorporation surrender.

b. Articles of amendment or restatement.

c. Articles of merger.

d. Articles of correction.

e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

h. A copy of articles of merger ~~or consolidation~~ of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

i. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be \$10:

a. An application to reserve *or to renew the reservation of* a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. A statement of withdrawal of a foreign corporation.

3. For issuing a certificate of change of name the fee shall be \$5.

§ 13.1-819. Articles of incorporation.

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that ~~meets~~ *satisfies* the requirements of § 13.1-829.

2. If the corporation is to have no members, a statement to that effect.

3. If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting or denying the right to vote.

4. If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed, and a designation of ex officio directors, if any.

5. The address of ~~its~~ *the corporation's* initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in ~~this~~ *the* Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the ~~persons~~ *individuals* who are to serve as the initial directors-;

2. ~~Any provisions~~ *Provisions* not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized-;

b. Regarding the management ~~or of the business and~~ regulation of the ~~business affairs~~ of the corporation-;

c. Defining, limiting and regulating the powers of the corporation, its directors, and its members-;

and

d. Any provision that under this ~~chapter~~ *Act* is required or permitted to be set forth in the bylaws.

C. ~~It shall not be necessary to set forth in the~~ *The* articles of incorporation *need not set forth* any of the corporate powers enumerated in this ~~chapter~~ *Act*.

D. *Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-804.*

E. Except as provided in subsection A of § 13.1-855, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

§ 13.1-820. Issuance of certificate of incorporation.

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

When the certificate of incorporation ~~becomes~~ *is* effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this ~~chapter~~ *Act*.

§ 13.1-822. Organization of corporation.

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by adopting bylaws, appointing officers, and carrying on any other business brought before the meeting; *or*

2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this ~~chapter~~ *Act* to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of ~~this~~ *the* Commonwealth.

§ 13.1-823. Bylaws.

A. The ~~initial bylaws of the corporation shall be adopted by its incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.~~

B. The bylaws of a corporation may contain any provision for ~~the regulation or management of~~ *managing* the business *and regulating the affairs* of the corporation that is not inconsistent with law or the articles of incorporation.

§ 13.1-824. Emergency bylaws.

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D ~~of this section~~. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;

2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and

2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

§ 13.1-825. Purposes.

Every corporation incorporated under this ~~chapter~~ *Act* has the purpose of engaging in any lawful ~~purpose activity or purposes~~, unless:

1. A statute requires the corporation to issue shares or one of the purposes of the corporation is to conduct the business of a public service company other than a sewer company; or

2. A more limited purpose is (i) set forth in the articles of incorporation or (ii) required to be set forth in the articles of incorporation by any other ~~laws~~ *law* of ~~this~~ *the* Commonwealth.

§ 13.1-826. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business *and affairs*, including, without limitation, power ~~to~~:

1. ~~Sue~~ *To sue* and be sued, complain and defend, in its corporate name;;

2. ~~Have~~ *To have* a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;;

3. ~~Purchase~~ *To purchase*, receive, lease, or otherwise acquire, *and* own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever

located;

4. ~~Sell~~ *To sell*, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

5. ~~Purchase~~ *To purchase*, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and *deal* with, shares or other interests in, or obligations of, any other domestic or foreign corporations organized for any purpose, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof; and to guarantee the payment of any bonds or other obligations of any association, partnership, or individual or any other domestic or foreign corporation organized for any purpose; *entity*;

6. ~~Make~~ *To make* contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, *which may be convertible into, or include the option to purchase, other securities or property of the corporation*, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and, or income;

7. ~~Lend~~ *To lend* money, invest and reinvest its funds, and *receive and* hold real and personal property as security for repayment;

8. ~~Transact~~ *To transact* its business, locate offices, and exercise the powers granted by this chapter Act within or without ~~this the~~ *the* Commonwealth;

9. ~~Elect~~ *To elect* directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

10. ~~Make~~ *To make* and amend bylaws, not inconsistent with its articles of incorporation or with the laws of ~~this the~~ *the* Commonwealth, for managing ~~or the business and~~ *and* regulating the ~~business affairs~~ *business affairs* of the corporation;

11. ~~Make~~ *To make* donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;

12. ~~Pay~~ *To pay* pensions and establish pension plans, pension trusts, profit-sharing plans, *bonus plans*, and ~~other benefit and incentive and compensation~~ *plans* for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

13. ~~Insure~~ *To insure* for its benefit the life of any director, officer or employee of the corporation of *its directors, officers, or employees* and to continue such insurance after the relationship terminates;

14. ~~Cease~~ *To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation*;

15. *To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered*;

16. *To cease* its corporate activities and surrender its corporate franchise; *and*

~~15. Have~~ 17. *To have* and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings and loan association institution or a credit union shall have power to enter into partnership agreements, joint ventures, or other association of any kind with other corporations, whether organized under the laws of this Commonwealth or otherwise, or with any individual or individuals associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this chapter Act except where specifically so provided.

D. Each corporation which is deemed a private foundation, (as defined in § 509 of the Internal Revenue Code), unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, (as defined in § 4941 (d) of the Internal Revenue Code), retain any excess business holdings, (as defined in § 4943 (c) of the Internal Revenue Code), make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, (as defined in § 4945 (d) of the Internal Revenue Code). This subsection shall apply to any corporation organized under this chapter after December 31, 1969, under this Act or under the Virginia Nonstock Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; and to any corporation organized before January 1, 1970, only for its

667 taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e) (2)
 668 (B) or (C) of the Internal Revenue Code shall apply; or unless the board of directors of such corporation
 669 shall elect that such restrictions as ~~are~~ contained in this subsection shall not apply by filing written
 670 notice of such election with the Attorney General and the clerk of the Commission on or before
 671 December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection
 672 shall include future amendments to such Code sections and corresponding provisions of future internal
 673 revenue laws.

674 § 13.1-827. Emergency powers.

675 A. In anticipation of or during ~~any an~~ emergency defined in subsection D ~~of this section~~, the board
 676 of directors of a corporation may:

677 1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or
 678 agent; *and*

679 2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize
 680 the officers to do so.

681 B. During an emergency defined in subsection D ~~of this section~~, unless emergency bylaws provide
 682 otherwise:

683 1. Notice of a meeting of the board of directors need be given only to those directors whom it is
 684 practicable to reach and may be given in any practicable manner, including by publication and radio; *and*
 685 *and*

686 2. One or more officers of the corporation present at a meeting of the board of directors may be
 687 deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of
 688 rank and within the same rank in order of seniority, as necessary to achieve a quorum.

689 C. Corporate action taken in good faith during an emergency under this section to further the
 690 ordinary business *affairs* of the corporation:

691 1. Binds the corporation; and

692 2. May not be used to impose liability on a ~~corporate~~ director, officer, employee, or agent *of the*
 693 *corporation*.

694 D. An emergency exists for purposes of this section if a quorum of the corporation's board of
 695 directors cannot readily be assembled because of some catastrophic event.

696 § 13.1-828. Ultra vires.

697 A. Except as provided in subsection B of this section, ~~the validity of~~ corporate action may not be
 698 challenged on the ground that the corporation lacks or lacked power to act.

699 B. A corporation's power to act may be challenged:

700 1. In a proceeding by a member or a director against the corporation to enjoin the act; ~~or~~

701 2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other
 702 legal representative, against *an* incumbent or former ~~officers, directors, employees or agents~~ *officer,*
 703 *director, employee, or agent* of the corporation; or

704 3. In a proceeding against a corporation before the Commission.

705 C. In a proceeding by a member or a director under subdivision 1 of subsection B of this section to
 706 enjoin an unauthorized corporate act, the court may enjoin or set aside the act, ~~if equitable~~, and may
 707 award damages for loss, ~~other than~~ *except* anticipated profits, suffered by the corporation or another
 708 party because of enjoining the unauthorized act.

709 § 13.1-829. Corporate name.

710 A. ~~The~~ A corporate name shall not contain any word or phrase that indicates or implies that it is
 711 organized for the purpose of conducting any business other than a business which it is authorized to
 712 conduct.

713 B. Except as authorized by subsection C ~~of this section~~, a corporate name shall be distinguishable
 714 upon the records of the Commission from:

715 1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws
 716 of ~~this the~~ Commonwealth or authorized to transact business in ~~this the~~ Commonwealth;

717 2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

718 3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing
 719 shares, because its real name is unavailable for use in ~~this the~~ Commonwealth;

720 4. The name of a domestic limited liability company or a foreign limited liability company registered
 721 to transact business in ~~this the~~ Commonwealth;

722 5. A limited liability company name reserved under § 13.1-1013;

723 6. The designated name adopted by a foreign limited liability company because its real name is
 724 unavailable for use in ~~this the~~ Commonwealth;

725 7. The name of a domestic business trust or a foreign business trust registered to transact business in
 726 ~~this the~~ Commonwealth;

727 8. A business trust name reserved under § 13.1-1215;

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

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in ~~this the~~ Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in ~~this the~~ Commonwealth.

C. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon ~~its the Commission's~~ records from one or more of the names described in subsection B ~~of this section~~. The Commission shall authorize use of the name applied for if:

1. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

2. [Repealed.]

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

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection B, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subdivision 1 of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of this Commonwealth or authorized or registered to transact business in ~~this the~~ Commonwealth.

§ 13.1-830. Reserved name.

A. ~~Any A person or foreign or domestic corporation~~ may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation whose corporate name is not available. If the Commission finds that the *corporate* name applied for is available, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person ~~or corporation~~ by delivering to the Commission a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ 13.1-831. Registered name.

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § 13.1-924, if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection B of § 13.1-829.

B. A foreign corporation registers its corporate name, or its corporate name with any ~~additions~~ addition required by § 13.1-924, by:

1. Filing with the Commission (i) an application setting forth ~~the its corporate name of the corporation~~, or its corporate name with any addition required by § 13.1-924, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, ~~(or a document of similar import)~~, from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee *in the amount of twenty dollars* \$20. Except as provided in subsection E ~~of this section~~, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the ~~sixty-day~~ 60-day period preceding the date of expiration of the registration, a renewal application ~~which that~~ complies with *the requirements of* subsection B ~~of this section~~, and by paying a renewal fee of ~~twenty dollars~~ \$20. The renewal application ~~becomes is~~ effective when filed in accordance with this section and, except as provided in subsection E ~~of this section~~, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in ~~this the~~ Commonwealth under ~~that the registered~~ name or consent in writing to the use of that name by a corporation thereafter incorporated under this ~~chapter~~ Act or by another foreign corporation thereafter authorized to transact business in ~~this the~~ Commonwealth. The

registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in ~~this the~~ Commonwealth or consents to the authorization of another foreign corporation to transact business in ~~this the~~ Commonwealth under the registered name.

F. A foreign corporation ~~which that~~ has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of ~~ten dollars~~ \$10.

§ 13.1-832. Property title records.

Whenever ~~by merger or amendment to the articles of incorporation~~ the corporate name of any domestic or foreign corporation is changed or another domestic or foreign corporation succeeds to the ownership of its property, a certificate reciting such change or succession shall be issued by the clerk of the Commission upon request and such certificate, ~~or if may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records upon paying a fee of \$10 to the clerk of the court, but no tax shall be due thereon.~~ If such corporation is not a domestic corporation or a foreign corporation authorized to ~~transact~~ do business in ~~this the~~ Commonwealth, a similar certificate by any competent authority of the state ~~or country~~ of incorporation, may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records upon paying a fee of ~~ten dollars~~ \$10 to the clerk of the court, but no tax shall be due thereon.

§ 13.1-833. Registered office and registered agent.

A. Each corporation shall continuously maintain in ~~this the~~ Commonwealth:

1. A registered office ~~which that~~ may be the same as any of its places of business; and
2. A registered agent, who shall be:

a. An individual who is a resident of ~~this the~~ Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with ~~such the~~ registered office; or

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

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

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

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

1. The name of the corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address, (including the street and number, if any), of the new registered office, and the name of the county or city in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation ~~shall will~~ be in compliance with the requirements of § 13.1-833.

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

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

§ 13.1-835. Resignation of registered agent.

A. A registered agent may resign *his* agency appointment by signing and filing with the Commission *his* statement of resignation accompanied by ~~his a~~ certification that *he* has mailed a copy thereof to the principal office of the corporation by certified mail. The statement may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on

the thirty-first day after the date on which the statement was filed.

§ 13.1-836. Service on corporation.

A. ~~The A corporation's~~ registered agent of a corporation is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served *and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff.* Whenever any ~~such~~ person *so designated by the registered agent* accepts service of process *or whenever service is by facsimile*, a photographic copy of ~~such instrument~~ *the instruments designating the person or authorizing the method of service and receipt* shall be attached to the return.

B. Whenever a corporation ~~shall fail~~ *fails* to appoint or maintain a registered agent in ~~this the~~ Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

§ 13.1-837. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws. A corporation may issue certificates evidencing membership *interests* therein. ~~Memberships~~ *Membership interests* shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

§ 13.1-838. Annual meeting.

A. A corporation shall hold *a meeting of members* annually at a time stated in or fixed in accordance with the bylaws ~~a meeting of the members~~.

B. Annual meetings of members may be held at such place, ~~either~~ 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, members may participate in an annual meeting by use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member 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.

§ 13.1-839. Special meeting.

A. A corporation shall hold a special meeting of members ~~on~~:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; *or*

2. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. *Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.*

C. If not otherwise fixed under § 13.1-840 or § 13.1-844, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

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

~~D. Special members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.~~

~~E. If the articles of incorporation or bylaws so provide, members may participate in a special meeting of members by use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.~~

F. Only business within the purpose or purposes described in the meeting notice required by

subsection C of § 13.1-842 may be conducted at a special members' meeting.

§ 13.1-840. 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, summarily order a meeting of members to be held:

1. On petition of any member of the corporation entitled to participate in an annual meeting if an annual meeting was not held within fifteen 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 member who signed a demand for a special meeting that satisfies the requirements of § 13.1-839 if:

a. Notice of the special meeting was not given within thirty 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 members entitled to participate in the meeting, specify a record date for determining members 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.

§ 13.1-841. Corporate action without meeting.

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

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this Act to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer 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 members entitled to vote on the action 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 of the members entitled to vote on the take such corporate action; without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by unanimous written consent shall be effective according to its terms when all the requisite consents are in possession of the corporation. A member may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that all consents are in the possession of the corporation. Action Corporate action taken under this section is effective as of the date specified therein, provided that the consent states the date of execution by each member.

B. If not otherwise determined under § 13.1-840 or § 13.1-844, the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A of this section. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by 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 unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of a unanimous vote of voting members; at a meeting and may be described as such in any articles or document filed with the Commission under this chapter Act.

D. If this chapter corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this Act would have been required to be sent to members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this Act requires that notice of proposed corporate action be given to nonvoting members and the corporate action is to be taken by unanimous consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action at least ten not less than five days before the action it is taken. The notice shall contain or be accompanied by the same material that under this chapter Act would have been required to be sent to nonvoting members in a notice of meeting at

which the proposed corporate action would have been submitted to the members for action a vote.

§ 13.1-842. Notice of meeting.

A. 1. A corporation shall give notify members written notice of the date, time and place of each annual and special members' meeting. Such notice shall be given; either personally or by mail; no less than ten 10 nor more than sixty 60 days before the date of the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the corporation shall be given not less than twenty-five 25 nor more than sixty 60 days before the meeting date. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A. 1 of this subsection, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than sixty 60 days, and the second not less than seven days, before the date of the meeting.

3. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may give members written notice of the date, time and place of each annual and special members' meeting by a form of electronic transmission consented to by the member to whom the notice is given. A notice given by a form of electronic transmission shall be given as far in advance of the meeting as would be required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of a member shall be revocable by the member 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 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.

4. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to each member entitled to vote at such meeting.

B. Unless this chapter Act or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-840 or § 13.1-844, the record date for determining members entitled to notice of and to vote at an annual or special meeting is the close of business on the day before the effective date of the notice to the members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed by the bylaws under § 13.1-845, however, the notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

F. Notice given pursuant to subdivision A 3 of this section shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the member has consented to receive notice; (ii) if by electronic mail, when directed to the record address of the member or to such other electronic mail address at which the member has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the member of such specific posting when such notice is directed to an address at which the member has consented to receive notice; upon the later of such posting or the giving of such separate notice; and (iv) if by any other form of electronic transmission, when consented to by the member. An affidavit of the secretary 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.

§ 13.1-843. Waiver of notice.

A. A member may waive any notice required by this chapter Act, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to such the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member who attends member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

§ 13.1-844. Record date.

A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting groups in order to make a determination of members for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a ~~future date~~ as the record date *the date on which it takes such action or a future date*.

B. A record date fixed under this section may not be more than ~~seventy~~ 70 days before the meeting or action requiring a determination of members.

C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§ 13.1-844.1. Conduct of the meeting.

A. *At each meeting of members, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of directors.*

B. *Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.*

C. *The chairman of the meeting shall announce at the meeting when the polls will open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and to close upon the final adjournment of the meeting.*

§ 13.1-845. Members' list for meeting.

A. The officer or agent having charge of the record of members of a corporation shall make, at least ~~ten~~ 10 days before each meeting *of members*, a complete list of the members *entitled to vote at such meeting or any adjournment thereof*, with the address of each. ~~Where~~ *The list of members are* entitled to vote ~~the list~~ shall be arranged by voting group and within each voting group by class.

B. For a period of ~~ten~~ 10 days prior to the meeting, the list of members *shall be kept on file at the registered office of the corporation or at its principal office* and shall be subject to inspection by any member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting for the purposes thereof. The original record of members shall be prima facie evidence as to who are the members entitled to examine such list or records or to vote at any meeting of members. The right of the member of a corporation to inspect such list prior to a meeting shall be subject to the limitations set forth in subsection C of § 13.1-933.

C. If the requirements of this section have not been substantially complied with, the meeting shall, on the demand of any member in person or by proxy, be adjourned until the requirements are complied with. Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting prior to the making of any such demand, but any action taken by the members after the making of any such demand shall be invalid and of no effect.

§ 13.1-846. Voting entitlement of members.

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail. ~~If authorized by the board of directors, any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.~~

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

§ 13.1-847. Proxies.

A. A member entitled to vote may vote in person or; ~~unless the articles of incorporation or bylaws otherwise provide, unless the articles of incorporation or bylaws otherwise provide, by proxy. In either event, the vote of the member or the member's proxy may be submitted by electronic transmission if authorized as provided in subsection B of § 13.1-846.~~

B. Without limiting the manner in which a member may authorize another person or persons to act for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means by which a member may grant such authority:

1. A member may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the member or his authorized officer, director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

2. A member may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the inspectors of election can determine that the telegram, cablegram or other electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors, or if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

3. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the member, the member's agent or the member's attorney-in-fact authorized the transmission. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy becomes effective when a signed appointment form or an electronic transmission of the appointment is received by the secretary inspectors of election or other the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment; or
2. An employee of the corporation whose employment contract requires the appointment; or
3. A party to a voting agreement created under § 13.1-852.2.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D of this section is revoked when the interest with which it is coupled is extinguished.

G. Subject to § 13.1-848 and to any express limitation on the proxy's authority appearing on the face of stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any shares membership interest may vote such shares membership interest by proxy.

§ 13.1-847.1 Voting procedures and inspectors of elections.

A. A corporation may appoint one or more inspectors to act at a meeting of members and make a written report of the inspector's determinations. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of members, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxies and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of all votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties.

C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is

located, upon application by a member, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection B of § 13.1-847, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy.

§ 13.1-848. Corporation's acceptance of votes.

A. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is a ~~domestic or foreign corporation, association, estate, trust or partnership~~ an entity and the name signed purports to be that of an officer, partner or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

3. The name signed purports to be that of ~~an~~ a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, consent, waiver, or proxy appointment;

4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of ~~subdivision 2 of subsection~~ subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-847 are not liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ 13.1-849. Quorum and voting requirements for voting groups.

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this ~~chapter~~ Act or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

B. Once a member is ~~present~~ represented for any purpose at a meeting it, the member 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. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § 13.1-852.

§ 13.1-850. Action by single and multiple voting groups.

A. If the articles of incorporation or this chapter provide *Act provides* for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 13.1-849.

B. If the articles of incorporation or this chapter ~~provide~~ *Act provides* for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 13.1-849. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

§ 13.1-852. Voting for directors; cumulative voting.

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

B. Members 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 members are entitled to cumulate their votes for directors" (or words of similar import) means that the members 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. Members otherwise entitled to vote cumulatively may not vote 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 member who has the right to cumulate *his* votes gives notice to the secretary of the corporation not less than ~~forty-eight~~ 48 hours before the time set for the meeting of ~~his~~ *the member's* intent to cumulate *his* votes during the meeting. If one member gives ~~this~~ *such a* notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

§ 13.1-852.1. Member or director agreements.

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more of the other provisions of this chapter ~~provide~~ *Act* in that it:

1. Eliminates the board of directors or, *subject to the requirements of subsection A of § 13.1-872, one or more officers, or* restricts the discretion or powers of the board of directors *or any one or more officers;*

2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among *any of* them, including use of weighted voting rights or director proxies;

4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;

5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;

6. Requires dissolution of the corporation at the request of one or more of ~~its~~ *the* members, or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of *the* corporate ~~power~~ *powers* or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. *If Valid for an unlimited duration, if* the agreement is set forth in the articles of incorporation or bylaws, *unless* the agreement shall be ~~valid for an unlimited duration unless~~ otherwise amended by the members or the directors, as the case may be; *If; or valid for 10 years, if* the agreement is set forth in a written agreement, ~~the agreement shall be valid for ten years,~~ unless the agreement provides otherwise.

C. The existence of a ~~membership~~ *an* agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than 300 members of record. If the agreement ~~authorized by this section~~ ceases to be effective for any reason, the board of directors may, *if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws,* adopt an amendment to the articles of incorporation or bylaws, without member action; ~~in the case of a corporation that has members,~~ to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe the corporate formalities otherwise applicable to *the* matters governed by the agreement.

G. Incorporators or subscribers for ~~memberships~~ *membership interests* may act as members or directors with respect to an agreement authorized by this section if no members have been elected or appointed or, in the case of a corporation that has no members, no directors are elected or holding office when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

§ 13.1-852.2. Voting agreements.

A. *Two or more members entitled to vote may provide for the manner in which they will vote by signing an agreement for that purpose.*

B. *A voting agreement created under this section is specifically enforceable.*

§ 13.1-853. Requirement for and duties of board of directors.

A. ~~Each~~ *Except as provided in an agreement authorized by § 13.1-852.1,* each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business *and affairs* of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation *or in an agreement authorized by § 13.1-852.1.*

§ 13.1-854. Qualification of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. *A Unless the articles of incorporation or bylaws so prescribe,* a director need not be a resident of ~~this the~~ Commonwealth or a member of the corporation ~~unless the articles of incorporation or bylaws so prescribe.~~

§ 13.1-855. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease the number of directors, but to the extent that the corporation has members with voting privileges only the members may increase or decrease by more than ~~thirty~~ 30 percent the number of directors last elected *by the members or, if the directors' terms are staggered pursuant to § 13.1-858, the number of directors of all classes immediately following the most recent election of directors* by the members.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of

directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-858.

E. No individual shall be named or elected as a director without *his* prior consent.

§ 13.1-857. Terms of directors generally.

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. ~~The directors constituting terms of the initial board of directors shall hold office until the first annual election of directors or for of a corporation expire at the first members' meeting at which directors are elected, or if there are no members or the corporation's members do not have voting rights, at the end of such other period as may be specified in the articles of incorporation. Thereafter, directors shall be elected or appointed in the manner and for the terms~~

C. *The terms of all other directors expire at the next annual meeting of members following the directors' election unless their terms are staggered under § 13.1-858 or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.*

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

~~D~~ E. ~~In the absence of a provision in the articles of incorporation, the~~ The term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected *or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.*

E F. Except in the case of ex-officio directors, despite the expiration of a director's term, ~~he a~~ director continues to serve until *his* successor is elected and qualifies or until there is a decrease in the number of directors, *if any*.

§ 13.1-858. Staggered terms of directors.

A. The articles of incorporation may provide for *staggering the terms of directors* by dividing the total number of directors into *two or three* groups, ~~and the terms of office of the several groups need not be uniform~~ with each group containing *one-half or one-third of the total, respectively, as near as may be. In that event, the terms of directors in the first group expire at the first annual members' meeting after their election, the terms of directors in the second group expire at the second annual members' meeting after their election, and the terms of directors in the third group, if any, expire at the third annual members' meeting after their election. At each annual members' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms are expiring.*

B. If the articles of incorporation permit cumulative voting, any provision establishing *staggered* terms of directors shall provide that at least three directors shall be elected at each annual members' meeting.

§ 13.1-859. Resignation of directors.

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective ~~date time~~. If a resignation is made effective at ~~the a~~ later ~~date time~~, the board of directors may fill the pending vacancy before the effective ~~date time~~ if the board of directors provides that the successor does not take office until the effective ~~date time~~.

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

D. Upon the resignation of a director, ~~a the~~ corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, *if any*.

§ 13.1-860. Removal of directors.

A. The members may remove one or more directors with or without cause, unless the articles of incorporation ~~or bylaws~~ provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove *him*.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect *him* under cumulative voting is voted against *his* removal. If cumulative voting is not

1399 authorized, *unless the articles of incorporation require a greater vote*, a director may be removed ~~only~~
 1400 if the number of votes cast to remove *him* constitutes a majority of the votes entitled to be cast at an
 1401 election of directors of the voting group or voting groups by which the director was elected.

1402 D. If a corporation has no members *or no members with voting rights*, a director may be removed
 1403 pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a
 1404 director may be removed by such vote as would suffice for *his* election.

1405 E. A director may be removed only at a meeting called for the purpose of removing *him*. The
 1406 meeting notice shall state that the purpose, ~~or one of the purposes,~~ of the meeting is removal of the
 1407 director.

1408 F. Upon the removal of a director, the corporation may file an amended annual report with the
 1409 Commission indicating the removal of the director and the successor in office, *if any*.

1410 § 13.1-861. Judicial review of elections.

1411 Any member or director aggrieved by an election of directors may, after reasonable notice to the
 1412 corporation and each director whose election is contested, apply for relief to the circuit court in the
 1413 county or city in which the principal office of the corporation is located, or, if none in ~~this the~~
 1414 Commonwealth, ~~where in the county or city in which~~ its registered office is located. The court shall
 1415 proceed forthwith in a summary way to hear and decide the issues and thereupon to determine the
 1416 persons elected or order a new election or grant such other relief as may be equitable. Pending decision,
 1417 the court may require the production of any information and may by order restrain any person from
 1418 exercising the powers of a director if such relief is equitable.

1419 § 13.1-862. Vacancy on board of directors.

1420 A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of
 1421 directors, including a vacancy resulting from an increase *in the number of directors*:

1422 1. The members may fill the vacancy;

1423 2. The board of directors may fill the vacancy; or

1424 3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the
 1425 vacancy by the affirmative vote of a majority of the directors remaining in office.

1426 B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director
 1427 elected by a voting group of members, only the members of that voting group are entitled to vote to fill
 1428 the vacancy if it is filled by the members.

1429 C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later
 1430 date under subsection B of § 13.1-859 or otherwise, may be filled before the vacancy occurs but the
 1431 new director may not take office until the vacancy occurs.

1432 D. The corporation may file an amended annual report with the Commission indicating the filling of
 1433 a vacancy.

1434 § 13.1-864. Meetings of the board of directors.

1435 A. The board of directors may hold regular or special meetings in or out of ~~this the~~ Commonwealth.

1436 B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may
 1437 permit any or all directors to participate in a regular or special meeting by, or conduct the meeting
 1438 through the use of, any means of communication by which all directors *participating* may
 1439 simultaneously hear each other during the meeting. A director participating in a meeting by this means
 1440 is deemed to be present in person at the meeting.

1441 § 13.1-865. Action without meeting of board of directors.

1442 A. ~~Unless Except to the extent that~~ the articles of incorporation or bylaws ~~provide otherwise require~~
 1443 ~~that action by the board of directors be taken at a meeting~~, action required or permitted by this Act to
 1444 be taken ~~at a by the board of directors' meeting~~ directors may be taken without a meeting if the action
 1445 is taken by all members of the board. The action shall be evidenced by one or more written consents
 1446 stating the action taken, signed by each director either before or after each director signs a consent
 1447 describing the action to be taken, and included in the minutes or filed with the corporate records
 1448 reflecting the action taken and delivers it to the corporation.

1449 B. Action taken under this section ~~becomes~~ is effective when the last director signs the consent,
 1450 unless the consent specifies a different effective date, in which event the action taken is effective as of
 1451 the date specified therein provided the consent states the date of execution by each director.

1452 C. A director's consent may be withdrawn by a revocation signed by the director and delivered to
 1453 the corporation prior to delivery to the corporation of unrevoked written consents signed by all the
 1454 directors.

1455 D. For purposes of this section, a written consent and the signing thereof may be accomplished by
 1456 one or more electronic transmissions.

1457 E. A consent signed under this section has the effect of action taken at a meeting ~~vote~~ of the board
 1458 of directors and may be described as such in any document.

1459 § 13.1-866. Notice of board of directors' meetings.

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

C. Notwithstanding any provision of this ~~chapter~~ Act to the contrary, a notice of the date, time, place or purpose of a regular or special meeting of the board of directors may be given by a form of electronic transmission consented to by the director to whom the notice is given. Any such consent of a director shall be revocable by the director 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 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 by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the director has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the director of such specific posting when such notice is directed to an address at which the director 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 director. An affidavit of the secretary 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.

§ 13.1-867. Waiver of notice by director.

A. A director may waive any notice required by this ~~chapter~~ Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to *him* of the meeting unless the director at the beginning of the meeting, or promptly upon *his* arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 13.1-868. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, *or unless otherwise specifically provided in this Act*, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined ~~by~~ *under* subsection A ~~of this section~~.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of ~~the~~ directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: ~~(i) he~~

1. *The director* objects at the beginning of the meeting, or promptly upon *his* arrival, to holding it or transacting specified business at the meeting; or ~~(ii) he~~

2. *He* votes against, or abstains from, the action taken.

E. *Except as provided in § 13.1-852.1, a director shall not vote by proxy.*

F. Whenever this ~~chapter~~ Act requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

§ 13.1-869. Committees.

A. Unless the articles of incorporation or ~~the~~ bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee ~~may~~ *shall* have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater *number* of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § 13.1-868.

C. Sections 13.1-864 through 13.1-868, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 13.1-853, except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members; provided that the executive committee of the board of directors may exercise the authority of the board of directors to approve any amendment of the articles of incorporation if so authorized by the articles of incorporation;

2. Fill vacancies on the board or on any of its committees;

3. Amend the articles of incorporation pursuant to § 13.1-885;

4. Adopt, amend, or repeal the bylaws; or

5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 13.1-870.

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

§ 13.1-870. General standards of conduct for directors.

A. A director shall discharge *his* duties as a director, including *his* duties as a member of a committee, in accordance with *his* good faith *business* judgment of the best interests of the corporation.

B. Unless ~~he~~ a director has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which ~~he~~ the director is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if *he* performed the duties of *his* office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

§ 13.1-870.1. Limitation on liability of officers and directors; exception.

A. ~~Except as otherwise provided in this section, in~~ In any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the ~~twelve~~ 12 months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501 (c) of the Internal Revenue Code for *his* services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the ~~twelve~~ 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for *his* services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director

who receives compensation from a community association for *his* services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the ~~twelve~~ 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for *his* services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, "community association" shall mean a corporation incorporated under this chapter which ~~Act that~~ owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association.

§ 13.1-870.2. Limitation on liability of officers and directors; additional exception.

A. As used in this section, "community association" shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership or specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for *his* services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the ~~twelve~~ 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for *his* services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

§ 13.1-871. Director conflict of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has a ~~direct or indirect personal~~ *an interest that precludes him from being a disinterested director*. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction; ~~or~~

2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or

3. The transaction was fair to the corporation.

B. ~~For purposes of this section, a director of the corporation has an indirect personal interest in a transaction if (i) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (ii) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation. A vote or consent of an entity in which the director has an interest described in the preceding sentence is deemed to be a vote or consent of the director for purposes of this section.~~

~~C. For purposes of subdivision A 1 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee, who have no direct or indirect personal interest in the transaction; but a transaction may shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors who have no direct or indirect personal interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect personal interest in the transaction who is not disinterested does not affect the validity of any action taken under subdivision A 1 of subsection A of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.~~

~~D. C. For purposes of subdivision A 2 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be cast by members whether or not present, that may be counted under this subsection. A The votes controlled by a director who has a direct or indirect personal interest in the transaction may not is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2 of subsection A of this section. His vote, The director's votes, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, who that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of~~

taking action under this section.

§ 13.1-871.1. Business opportunities.

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction; or

2. Members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

§ 13.1-872. Required officers.

A. Except as provided in an agreement authorized by § 13.1-852.1, a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-804.

B. A ~~duly appointed~~ The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.

§ 13.1-874. Resignation and removal of officers.

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective ~~date~~ time. If a resignation is made effective at a later ~~date and~~ time, the corporation ~~accepts the future effective date~~, it may fill the pending vacancy before the effective ~~date~~ time if the successor does not take office until the effective ~~date~~ time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

§ 13.1-875. Definitions.

In this article:

"Articles of incorporation" includes the bylaws of any corporation created by Act of the General Assembly.

"Corporation" includes any domestic corporation and any domestic or foreign predecessor entity of a domestic corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or an individual who, while a director or officer of a the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprise entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his such person's duties to the corporation also impose duties

on, or otherwise involve services by, ~~him~~ *such person* to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal ~~representatives~~ *representative* of a director or officer.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, ~~(including an any~~ excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an ~~individual other than a director officer~~, as contemplated in § 13.1-881, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ *entity*.

"Party" ~~includes~~ *means* an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, *arbitrative*, or investigative and whether formal or informal.

§ 13.1-876. Authority to indemnify.

A. Except as provided in subsection D of ~~this section~~, a corporation may indemnify an individual made a party to a proceeding because ~~he the individual~~ is or was a director against liability incurred in the proceeding if ~~the director~~:

1. ~~He conducted~~ *Conducted* himself in good faith;

2. ~~He believed~~ *Believed*:

a. In the case of conduct in *his* official capacity with the corporation, that *his* conduct was in ~~the its~~ best interests of ~~the corporation~~; and

b. In all other cases, that *his* conduct was at least not opposed to ~~the its~~ best interests of ~~the corporation~~; and

3. In the case of any criminal proceeding, *that he* had no reasonable cause to believe *that his* conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose *he* believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of ~~item b of subdivision A 2 b of subsection A of this section~~.

C. The termination of a proceeding by judgment, order, settlement or conviction, *or upon a plea of nolo contendere or its equivalent*, is not, of itself determinative that the director did not meet the relevant standard of conduct described in this section.

D. ~~A Unless ordered by a court under subsection C of § 13.1-79.1~~, a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation ~~in which the director was adjudged liable to the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A~~; or

2. In connection with any other proceeding charging improper personal benefit to ~~him the director~~, whether or not involving action in *his* official capacity, in which *he* was adjudged liable on the basis that personal benefit was improperly received by *him*.

E. ~~Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.~~

§ 13.1-877. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which *he* was a party because *he* is or was a director of the corporation against reasonable expenses incurred by *him* in connection with the proceeding.

§ 13.1-878. Advance for expenses.

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

1. The director furnishes the corporation a written statement of *his* good faith belief that *he* has met the standard of conduct described in § 13.1-876;

2. The director furnishes the corporation a written undertaking, executed personally or on *his* behalf, to repay ~~the advance if any funds advanced if he is not entitled to mandatory indemnification under § 13.1-877 and it is ultimately determined that he did not meet the under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard of conduct~~; and

3. A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

B. The undertaking required by subdivision A 2 of ~~subsection A of this section~~ shall be an unlimited

general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. ~~Determinations and authorizations~~ *Authorizations of payments under this section shall be made in the manner specified in § 13.1-880 by:*

1. *The board of directors:*

a. *If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or*

b. *If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as disinterested directors may participate; or*

2. *The members, but any membership interest under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.*

§ 13.1-879.1. Court orders for advances, reimbursement or indemnification.

A. An individual who is made a party to a proceeding because he is ~~or was~~ a director of a the corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses, or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances ~~and/or~~, reimbursement, *or both*, for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of ~~his~~ *the director's* reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though *he* was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its ~~shareholders~~ *members*, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances ~~and/or~~, reimbursement, or ~~indemnification~~ *both*, nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its ~~shareholders~~ *members*, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

§ 13.1-880. Determination and authorization of indemnification.

A. A corporation may not indemnify a director under § 13.1-876 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible ~~in the circumstances~~ because *he* has met the *relevant* standard of conduct set forth in § 13.1-876.

B. The determination shall be made:

1. ~~By~~ *If there are two or more disinterested directors, by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;*

2. ~~If a quorum cannot be obtained under subdivision 1 of this subsection, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;~~

3. ~~By special legal counsel:~~

a. ~~Selected by the board of directors or its committee in the manner prescribed in subdivision 1 or 2 of this subsection; or~~

b. ~~If a quorum of the board of directors cannot be obtained under subdivision 1 of this subsection and a committee cannot be designated under subdivision 2 of this subsection, selected by majority vote of there are fewer than two disinterested directors, selected by the full board of directors, in which selection directors who are parties do not qualify as disinterested directors may participate; or~~

4 ~~3.~~ *By the members, but directors who are membership interests under the control of a director who at the time parties to the proceeding does not qualify as a disinterested director may not vote be voted on the determination.*

C. Authorization of indemnification ~~and evaluation as to reasonableness of expenses~~ shall be made in the same manner as the determination that indemnification is permissible, except that if *there are fewer than two disinterested directors or if the determination is made by special legal counsel*, authorization of indemnification ~~and evaluation as to reasonableness of expenses~~ shall be made by those entitled under

subdivision 3 of subsection B of this section 2 to select counsel.

§ 13.1-881. Indemnification of officers.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation ~~who is not a director~~ is entitled to mandatory indemnification under § 13.1-877, and is entitled to apply for court-ordered indemnification under § 13.1-879.1, in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer, ~~employee,~~ or agent of the corporation ~~who is not a director~~ to the same extent as to a director.

§ 13.1-882. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, ~~or officer, employee or agent~~ of the corporation, or ~~who, while a director or officer of the corporation,~~ is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, *limited liability company*, partnership, joint venture, trust, employee benefit plan or other ~~enterprise entity~~, against liability asserted against or incurred by ~~him~~ *such person* in that capacity or arising ~~out of his from his~~ status as a director, ~~or officer, employee or agent,~~ whether or not the corporation would have power to indemnify *him* against the same liability under § 13.1-876 or § 13.1-877.

§ 13.1-883. Application of article.

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity 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, employer or agent~~ that may be authorized by the articles of incorporation or any bylaw made by the members or any resolution adopted, before or after the event, by the members, except an indemnity against (i) ~~his such person's~~ willful misconduct, or (ii) a knowing violation of the criminal law. Unless the articles of incorporation, or any such bylaw or resolution expressly provides otherwise, any determination as to the right to any further indemnity shall be made in accordance with *subsection B of § 13.1-880 B*. 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. The provisions of this article and Article 8 (§ 13.1-853 et seq.) of this ~~chapter Act~~ shall apply to the same extent to any cooperative organized under the Code of Virginia.

D. 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.

E. 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 appearance as a witness in a proceeding at a time when he is not a party.

F. This article does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent who is not a director or officer.

§ 13.1-885. Amendment of articles of incorporation by directors.

A. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;

2. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Commission;

3. To add, delete, or change a geographic attribution for the name; or

4. To make any other change expressly permitted by this Act to be made without member action.

§ 13.1-886. Amendment of articles of incorporation by directors and members.

A. Where there are members having voting rights, a ~~corporation's board of directors may propose one or more amendments to except where member approval of an amendment of the articles of incorporation for submission to the members.~~

~~B. For the amendment to~~ *is not required by this Act, an amendment to the articles of incorporation shall be adopted in the following manner:*

1. The proposed amendment shall be adopted by the board of directors shall recommend;

2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also transmit to the members a

1887 *recommendation that the members approve the amendment, unless the board of directors determines*
 1888 *makes a determination that because of conflict conflicts of interests interest or other special*
 1889 *circumstances it should not make no such a recommendation and communicates, in which case the*
 1890 *board of directors shall transmit to the members the basis for its that determination to the members with*
 1891 *the amendment; and*

1892 2 3. The members entitled to vote on the amendment shall approve the amendment as provided in
 1893 subsection E of this section D.

1894 C B. The board of directors may condition its submission of the proposed amendment on any basis.

1895 D C. The corporation shall notify each member entitled to vote of the proposed members' meeting in
 1896 accordance with § 13.1-842. The notice of meeting shall also state that the purpose, or one of the
 1897 purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a
 1898 copy of the amendment.

1899 E D. Unless this chapter Act or the board of directors, acting pursuant to subsection C of this section
 1900 B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled
 1901 to vote on the proposed amendment by more than two-thirds of all the votes cast on the amendment by
 1902 that voting group at a meeting at which a quorum of the voting group exists. The articles of
 1903 incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote
 1904 by separate voting groups so long as the vote provided for is not less than a majority of all the votes
 1905 cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a
 1906 quorum of the voting group exists.

1907 § 13.1-887.1. Amendment prior to organization.

1908 When a corporation has not yet completed its organization and, its board of directors or
 1909 incorporators, in the event that there are is no members or board of directors, may adopt one or more
 1910 amendments to the corporation's articles of incorporation may be adopted by a majority of the
 1911 incorporators.

1912 § 13.1-888. Articles of amendment.

1913 A. A corporation amending its articles of incorporation shall file with the Commission articles of
 1914 amendment setting forth:

1915 1. The name of the corporation;

1916 2. The text of each amendment adopted or the information required by subdivision L 5 of
 1917 § 13.1-804;

1918 3. The date of each amendment's adoption;

1919 4. If an amendment was adopted:

1920 a. By the incorporators, a statement to that effect, including the reason director approval and member
 1921 approval were not required, and a statement of the fact that the amendment was approved by a majority
 1922 of the incorporators; and

1923 b. By by the incorporators or the board of directors without member approval, a statement to that
 1924 effect that the amendment was duly approved by the incorporators or by the board of directors, as the
 1925 case may be, including the reason member approval was not required, and a statement of the fact that
 1926 the amendment received the vote of at least two-thirds of the directors in office;

1927 5. If an amendment was approved by the members, either:

1928 a. A statement that the amendment was adopted by unanimous consent of the members; or

1929 b. A statement that the amendment was proposed by the board of directors and submitted to the
 1930 members in accordance with this Act and a statement of:

1931 (1) The existence of a quorum of each voting group entitled to vote separately on the amendment;
 1932 and

1933 (2) Either the total number of votes cast for and against the amendment by each voting group
 1934 entitled to vote separately on the amendment or the total number of undisputed votes cast for the
 1935 amendment by each voting group and a statement that the number cast for the amendment by each
 1936 voting group was sufficient for approval by that voting group.

1937 B. If the Commission finds that the articles of amendment comply with the requirements of law and
 1938 that all required fees have been paid, it shall issue a certificate of amendment.

1939 § 13.1-889. Restated articles of incorporation.

1940 A. A corporation's board of directors may restate its articles of incorporation at any time with or
 1941 without member action approval.

1942 B. The restatement may include one or more new amendments to the articles. If the restatement
 1943 includes an a new amendment requiring member approval, it shall be adopted and approved as provided
 1944 in § 13.1-886. If the restatement includes an amendment that does not require member approval, it shall
 1945 be adopted as provided in § 13.1-885.

1946 C. If the board of directors submits a restatement for member action approval, the corporation shall
 1947 notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842.

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~~ *Whether the restatement's adoption restatement contains a new amendment to the articles;*

3. ~~Whether the restatement contains an amendment to the~~ *The text of the restated articles and, if it does not, that the board of directors adopted the restatement of incorporation or amended and restated articles of incorporation, as the case may be;*

4. *Information required by subdivision L 5 of § 13.1-804;*

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

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

7. If the restatement contains ~~an~~ *a new amendment* to the articles not requiring member approval, the information required by subdivision A 4 of § 13.1-888; and

8. If the restatement contains ~~an~~ *a new amendment* to the articles requiring member approval, the information required by subdivision A 5 of § 13.1-888.

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

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

§ 13.1-891. Effect of amendment of articles of incorporation.

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

§ 13.1-892. Amendment of bylaws by board of directors or members.

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or ~~this chapter~~ § 13.1-893 reserves ~~this~~ *that* power exclusively to the members; or

2. The members in *repealing*, adopting, or amending ~~particular bylaws provide a bylaw expressly provide~~ that the board of directors may not amend ~~or~~, repeal, *or reinstate* that bylaw.

§ 13.1-893. Bylaw provisions increasing quorum or voting requirements for directors.

A. A bylaw that ~~fixes increases~~ *a greater* quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members, *unless the bylaws otherwise provide;* or

2. If ~~originally~~ adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that ~~fixes increases~~ *a greater* quorum or voting requirement for the board of directors may provide that it ~~may~~ *shall* be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under ~~subdivision 2 of subsection A of this section to adopt or amend or repeal~~ a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall ~~meet be effective only if it meets~~ the quorum requirement and ~~be~~ *is* adopted by the vote required to take action under the quorum and voting requirement then in effect.

§ 13.1-893.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § 13.1-894.

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may predate the merger or be created by the merger.

§ 13.1-894. Merger.

A. One or more domestic corporations may merge into another corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this Act. The board of directors of each survivor may be or, pursuant to subdivision C 5, become a stock or nonstock corporation shall adopt and its members, if required by § 13.1-896, shall approve a plan of merger.

B. The plan of merger shall set forth:

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

2. The terms and conditions of the merger A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation or may be created pursuant to the terms of the plan of merger only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger may set forth include:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger; and

2. Other provisions relating to the merger

The terms and conditions of the merger;

3. The manner and basis of converting the membership interests of each merging domestic or foreign corporation and eligible interests of each domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign corporation or stock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-804.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the members of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that, subsequent to approval of the plan by such members, the plan may not be amended to change:

1. The amount or kind of membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other property to be received under the plan by the members of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by subsection B of § 13.1-885; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

§ 13.1-895. Action on plan of merger.

A. ~~Where~~ In the case of a domestic corporation that is a party to a merger, where the members of any merging corporation have voting rights, a the plan of merger shall be adopted in the following manner:

1. ~~The~~ by the board of directors of such corporation party to the merger, after. Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit the plan of merger, except as provided in subdivision 7 of this subsection, to the members for their approval by its members.

2. For a plan of merger to be approved:

a. The board of directors shall recommend the plan of merger also transmit to the members a recommendation that the members approve the plan, unless the board of directors determines makes a determination that because of conflict conflicts of interests interest or other special circumstances it

should not make ~~no~~ such a recommendation and communicates, in which case the board of directors shall transmit to the members the basis for its that determination to the members with the plan; and

~~b. The members shall approve the plan as provided in subdivision 5 of this subsection.~~

3 B. The board of directors may condition its submission of the proposed plan of merger to the members on any basis.

4 C. ~~The~~ If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, ~~of the proposed members' meeting in accordance with § 13.1-842 of the meeting of members at which the plan is to be submitted for approval.~~ The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

5 D. Unless this chapter the articles of incorporation or the board of directors, acting pursuant to subdivision 3 of this subsection, B, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast on the plan by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan transaction at a meeting at which a quorum of the voting group exists.

6. Voting by a class of members as a separate voting group is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment

E. Separate voting by voting groups is required:

1. On a plan of merger by each class of members:

a. Whose membership interests are to be converted under the plan of merger into membership interests in a different domestic or foreign corporation, or eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing; or

b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the articles of incorporation, would require action by separate voting groups under § 13.1-887.

7. Action by the members of the surviving corporation on a plan of merger is not required if:

a. The 2. On a plan of merger, if the voting group is entitled under the articles of incorporation of the surviving corporation will not differ from its articles before the merger to vote as a voting group to approve a plan of merger.

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

1. The corporation will survive the merger;

2. Except for amendments permitted by subsection B of § 13.1-885, its articles of incorporation will not be changed; and

b 3. Each person who is a member of the surviving corporation immediately before the effective date of the merger will retain the same membership interest with identical designation, preferences, limitations, and relative rights, immediately after the effective date of the merger as held before.

B G. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

C. Any plan of merger may contain a provision that the board of directors of each corporation party to the merger may amend the plan at any time prior to issuance of the certificate of merger. Where a plan of merger is required to be submitted to the members for their approval an amendment made subsequent to the submission of the plan to the members of any corporation party to the merger shall not (i) alter or change any of the terms and conditions of the plan if such alteration or change would adversely affect the members of any class of such corporation, or (ii) alter or change any term of the articles of incorporation of any corporation whose members shall approve the plan of merger. If articles of merger already have been filed with the Commission, amended articles of merger shall be filed with

2131 the Commission prior to the issuance of the certificate of merger.

2132 D. Unless a plan of merger prohibits abandonment of the merger without member approval, after the
 2133 merger has been authorized, and at any time prior to issuance of the certificate of merger, the merger
 2134 may be abandoned, subject to any contractual rights, without further member action, in accordance with
 2135 the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of
 2136 directors of each corporation party to the merger. Written notice of abandonment shall be filed with the
 2137 Commission prior to the issuance of the certificate of merger.

2138 H. If as a result of a merger one or more members of a domestic corporation would become subject
 2139 to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the
 2140 plan of merger shall require the execution by each member of a separate written consent to become
 2141 subject to such owner liability.

2142 § 13.1-896. Articles of merger.

2143 A. After a plan of merger is approved by the members, or adopted by the board of directors if
 2144 member approval is not required, the surviving corporation shall file with the Commission has been
 2145 adopted and approved as required by this Act, articles of merger shall be executed by on behalf of each
 2146 party to the merger setting. The articles shall set forth:

2147 1. The plan of merger, the names of the parties to the merger, and, for each party that is a foreign
 2148 corporation or eligible entity, the name of the state or country under whose law it is incorporated or
 2149 formed;

2150 2. Where the members of any merging corporation have voting rights, then as to each such
 2151 corporation, If the articles of incorporation of a domestic corporation that is the survivor of a merger
 2152 are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to
 2153 the articles of merger, the amendments to the survivor's articles of incorporation or the articles of
 2154 incorporation of the new corporation;

2155 3. If the plan of merger required approval by the members of a domestic corporation that was a
 2156 party to the merger, either:

2157 a. A statement that the plan was adopted approved by the unanimous consent of the members; or

2158 b. A statement that the plan was submitted to the members by the board of directors in accordance
 2159 with this Act, and a statement of:

2160 (1) The existence of a quorum of designation of and number of votes entitled to be cast by each
 2161 voting group entitled to vote separately on the plan; and

2162 (2) Either the total number of votes cast for and against the plan by each voting group entitled to
 2163 vote separately on the plan or the total number of undisputed votes cast for the plan separately by each
 2164 voting group and a statement that the number cast for the plan by each voting group was sufficient for
 2165 approval by that voting group.

2166 3 4. Where any merging If the plan of merger did not require approval by the members of a
 2167 domestic corporation has no members, or no members having voting rights, then that was a party to the
 2168 merger, a statement of to that fact effect including the reason approval was not required, the date of the
 2169 meeting of the board of directors at which the plan was adopted and a statement of the fact that such
 2170 plan received the vote of a majority of the directors in office; and

2171 5. As to each foreign corporation or eligible entity that was a party to the merger, a statement that
 2172 the participation of the foreign corporation or eligible entity was duly authorized as required by the
 2173 organic law of the corporation or eligible entity.

2174 B. Articles of merger shall be filed with the Commission by the survivor of the merger. If the
 2175 Commission finds that the articles of merger comply with the requirements of law and that all required
 2176 fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may
 2177 be combined with any filing required under the organic law of any domestic eligible entity involved in
 2178 the transaction if the combined filing satisfies the requirements of both this section and the other
 2179 organic law.

2180 § 13.1-897. Effect of merger.

2181 A. When a merger takes effect becomes effective:

2182 1. Every other The domestic or foreign corporation party to the merger merges into the surviving
 2183 corporation and the separate existence of every corporation except the surviving corporation ceases or
 2184 eligible entity that is designated in the plan of merger as the survivor continues or comes into existence
 2185 as the case may be;

2186 2. The title to all real estate and other property owned by each corporation party to the merger shall
 2187 be taken and deemed to be transferred to and vested in the surviving corporation without reversion or
 2188 impairment separate existence of every domestic or foreign corporation or eligible entity that is merged
 2189 into the survivor ceases;

2190 3. The surviving corporation has all liabilities of each corporation party to the merger Property
 2191 owned by and, except to the extent that assignment would violate a contractual prohibition on

assignment by operation of law, every contract right possessed by each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

4. A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;

5. The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger; and

6. The former members of every corporation party to the merger are entitled only to the rights provided in the articles of merger, articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;

7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and

8. The membership interests of each domestic or foreign corporation that is a party to the merger and the eligible interests in an eligible entity that is a party to the merger that are to be converted under the plan of merger into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such membership interests or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under the organic law of the eligible entity.

B. Upon a merger's becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger.

C. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States, or another country, shall also be a domestic corporation of the Commonwealth.

§ 13.1-897.1. Abandonment of a merger.

A. Unless otherwise provided in a plan of merger or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger has become effective, the merger may be abandoned by a domestic corporation that is a party thereto without action by members in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger.

B. If a merger is abandoned under subsection A after articles of merger have been filed with the Commission but before the certificate of merger has become effective, a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

§ 13.1-898.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of this the Commonwealth shall govern the effect of domesticating in this the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated; and
2. The terms and conditions of the domestication.

D. The plan of domestication may include:

1. Subject to the provisions of subsection C, amendments to the articles of incorporation of the corporation following its domestication or a restatement of the articles of incorporation; and
2. Any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the

plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. Where a plan of domestication is required to be submitted to the members for their approval, an amendment made subsequent to the submission of the plan to the members of the corporation shall not alter or change any of the terms and or conditions of the plan if such alteration or change would adversely affect the members of any class of such the corporation.

§ 13.1-898.3. Action on plan of domestication by a domestic corporation.

A. When the members of a domestic corporation have voting rights, a plan of domestication shall be adopted in the following manner:

1. The board of directors of the corporation shall adopt the plan of domestication.

2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.

3. For a plan of domestication to be approved:

a. The board of directors shall recommend the plan to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and

b. The members shall approve the plan as provided in subdivision 6 of this subsection.

4. The board of directors may condition its submission of the plan of domestication to the members on any basis.

5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842 at which the plan of domestication is to be submitted for approval. The notice shall also state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6. Unless this chapter Act or the board of directors, acting pursuant to subdivision 4 of this subsection, requires a greater vote, the plan of domestication to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast on the plan by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subdivision or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

7. Voting by a class of members as a separate voting group is required on a plan of domestication if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under § 13.1-887.

B. When a domestic corporation has no members, or no members have voting rights, a plan of domestication shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

§ 13.1-898.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in this the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-829;

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. The articles of domestication shall have attached articles of incorporation that comply with the requirements of this chapter Act.

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

D. The certificate of domestication shall become effective pursuant to § 13.1-806.

E. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter Act.

F. If the foreign corporation is authorized to transact business in this the Commonwealth under

Article 14 (§ 13.1-919 et seq.) of this ~~chapter Act~~, its certificate of authority shall be cancelled automatically on the effective date of the certificate of domestication issued by the Commission.

§ 13.1-898.5. Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;
2. The corporation's new jurisdiction of incorporation;
3. The plan of domestication;
4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of ~~this the~~ Commonwealth;

5. Where the members of the corporation have voting rights, ~~either a statement:~~

- a. ~~A statement that~~ That the plan was adopted by the unanimous consent of the members; or
- b. ~~A statement that~~ That the plan was submitted to the members by the board of directors in accordance with this ~~chapter Act~~, and a statement of:

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

6. Where the corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office;

7. A statement that the domestic corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in ~~this the~~ Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on ~~him~~ under subdivision 7; and

9. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

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

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-921 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

§ 13.1-898.6. Effect of domestication.

A. When a foreign corporation's certificate of domestication in ~~this the~~ Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;
2. The liabilities remain the liabilities of the corporation;
3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;

4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

- a. Be incorporated under the laws of ~~this the~~ Commonwealth for all purposes;
- b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and
- c. Have been incorporated on the date it was originally incorporated or organized.

B. Any member or director of a foreign corporation that domesticates into ~~this the~~ Commonwealth

who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

§ 13.1-898.7. Abandonment of domestication.

A. Unless a plan of domestication of a domestic corporation prohibits abandonment of the domestication without member approval, after the domestication has been authorized, and at any time before the certificate of domestication filed in the other jurisdiction has become effective, the domestication may be abandoned without further member action in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors.

B. If a domestication is abandoned *as provided* under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into ~~this~~ *the* Commonwealth is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in ~~this~~ *the* Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

§ 13.1-899. Sale of assets in regular course of business.

~~A. A~~ *Unless the articles of incorporation provide otherwise, no approval of the members of a corporation may entitled to vote is required:*

1. *To sell, lease, exchange, or otherwise dispose of ~~all, any or substantially all,~~ of its property the corporation's assets* in the usual and regular course of business; ~~or;~~

2. *To mortgage, pledge, or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property the corporation's assets* whether or not in the usual and regular course of business, ~~on the terms and conditions and for the consideration determined by the board of directors; or~~

3. *To transfer any or all of the corporation's assets to one or more domestic or foreign eligible entities all of whose eligible interests are owned by the corporation.*

B. ~~Unless the articles of incorporation require it, approval by the members of a transaction described in subsection A of this section is not required.~~

§ 13.1-900. Sale of assets other than in regular course of business.

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its ~~property~~ *assets*, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its members approve the proposed transaction.

B. ~~For a transaction to be authorized where~~ *Where* there are members having voting rights, *a disposition, other than a disposition described in § 13.1-899, shall be authorized in the following manner:*

1. *The board of directors shall adopt a resolution authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed ~~transaction~~ disposition to the members with its for their approval. The board of directors shall also submit to the members a recommendation that the members approve the proposed disposition, unless the board of directors determines makes a determination that because of ~~conflict~~ conflicts of interests interest or other special circumstances it should not make ~~no~~ such a recommendation and communicates, in which case the board of directors shall transmit to the members the basis for its that determination to the members with the submission of the proposed transaction.*

2. *The members entitled to vote shall approve the transaction as provided in subdivision 5 of this subsection.*

3. *The board of directors may condition its submission of the proposed transaction on any basis.*

4 *3. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the ~~transaction~~ disposition will be effected. If only a summary of the agreement is sent to members, the corporation shall also send a copy of the agreement to any member who requests it.*

5 *4. Unless the board of directors, acting pursuant to subdivision 3 2 of this subsection, requires a greater vote, the ~~transaction~~ disposition to be authorized shall be approved by more than two-thirds of*

all the votes cast on the ~~transaction~~ *disposition* at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the ~~transaction~~ *disposition* by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

6 5. Unless the parties to the ~~transaction~~ *disposition* have agreed otherwise, after a ~~sale, lease, exchange, or other disposition of property is authorized, the transaction disposition of assets has been approved by members, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further member action in accordance with the procedure set forth in the resolution proposing the transaction disposition or, if none is set forth, in the manner determined by the board of directors.~~

C. For a transaction to be authorized where there are no members, or no members having voting rights, the proposed transaction shall be authorized upon receiving the vote of a majority of the directors in office.

D. A disposition of assets in the course of dissolution under Article 13 (§ 13.1-902 et seq.) is not governed by this section.

§ 13.1-902. Dissolution by directors and members.

A. Where there are members having voting rights, a corporation's board of directors may propose dissolution for submission to the members.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E of this section.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C of this section, requires a greater vote, dissolution to be authorized shall ~~be~~ *have been* approved by more than two-thirds of all the votes cast on the proposal to dissolve at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

§ 13.1-904. Articles of dissolution.

A. At any time after dissolution is ~~authorized~~ *approved*, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation.

2. The date dissolution was authorized.

3. Where there are members having voting rights,

a. ~~Either~~ *either* (i) a statement that dissolution was authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was submitted to the members by the board of directors in accordance with this ~~chapter~~; *article* and

b. ~~A~~ *a* statement of:

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

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

4. Where there are no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the dissolution was authorized and a statement of the fact that dissolution was authorized by the vote of a majority of the directors in office.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all required fees and taxes imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ 13.1-902 through 13.1-908.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective; the term includes a successor entity to which the

2497 *remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.*

2498 § 13.1-906. Effect of dissolution.

2499 A. A dissolved corporation continues its corporate existence but may not transact any business except
2500 that appropriate to wind up and liquidate its business *and affairs*, including:

2501 1. Collecting its assets;

2502 2. Disposing of its properties;

2503 3. Discharging or making provision for discharging its liabilities;

2504 4. Distributing its remaining property; and

2505 5. Doing every other act necessary to wind up and liquidate its business *and affairs*.

2506 B. Dissolution of a corporation does not:

2507 1. Transfer title to the corporation's property;

2508 2. Subject its directors to standards of conduct different from those prescribed in § 13.1-870;

2509 3. Change quorum or voting requirements for its board of directors or members; change provisions
2510 for selection, resignation, or removal of its directors or officers; or change provisions for amending its
2511 bylaws;

2512 4. Prevent commencement of a proceeding by or against the corporation in its corporate name;

2513 5. Abate or suspend a proceeding pending by or against the corporation on the effective date of
2514 dissolution; or

2515 6. Terminate the authority of the registered agent of the corporation.

2516 § 13.1-907. Distribution and plan of distribution of assets.

2517 A. The assets of a corporation in the process of dissolution shall be applied and distributed as
2518 follows:

2519 1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate
2520 provision shall be made therefor;

2521 2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which
2522 condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance
2523 with such requirements;

2524 3. Assets received and held by the corporation subject to limitations permitting their use only for
2525 charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a
2526 condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or
2527 conveyed to one or more domestic or foreign corporations, societies or organizations engaged in
2528 activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution
2529 adopted as provided in this ~~chapter~~ *Act* or as a court may direct;

2530 4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of
2531 incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the
2532 distributive rights of members, or any class or classes of members, or provide for distribution to others;

2533 5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or
2534 foreign corporations, whether issuing shares or not, as may be specified in a plan of distribution adopted
2535 as provided in this ~~chapter~~ *Act* or as a court may direct.

2536 B. A plan providing for the distribution of assets, not inconsistent with the provisions of this ~~chapter~~
2537 *Act*, may be adopted by a corporation in the process of dissolution and shall be adopted by a
2538 corporation for the purpose of authorizing any transfer or conveyance of assets for which this ~~chapter~~
2539 *Act* requires a plan of distribution. A plan shall be adopted in accordance with the procedures
2540 established in § 13.1-902 or § 13.1-903, as the case may be.

2541 § 13.1-908. Known claims against dissolved corporation.

2542 A. A dissolved corporation may dispose of the known claims against it by following the procedure
2543 described in this section.

2544 B. The dissolved corporation shall deliver to each of its known claimants written notice of the
2545 dissolution at any time after its effective date. The written notice shall:

2546 1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2547 2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is
2548 admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of
2549 indebtedness;

2550 3. Provide a mailing address where a claim may be sent;

2551 4. State the deadline, which may not be fewer than 120 days from the effective date of the written
2552 notice, by which confirmation of the claim ~~shall~~ *is required to* be delivered to the dissolved corporation;
2553 and

2554 5. State that, except to the extent that any claim is admitted, the claim will be barred if written
2555 confirmation of the claim is not delivered by the deadline.

2556 C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

2557 1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection

B of this section and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that *his* claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within ~~ninety~~ 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 ~~sixty~~ 60 days after the delivery of written notice to the claimant pursuant to subsection B of this section.

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 of ~~subsection C~~ of this section, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing. ~~The, 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.

§ 13.1-908.1. Other claims against dissolved corporation.

A. A dissolved corporation may also 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;

2. Describe the information that is required to be included in a claim and provide a mailing address to which the claim may be sent; and

3. 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 publication of the notice.

C. If the dissolved corporation publishes a newspaper notice in accordance with subsection B, 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 notice:

1. A claimant who was not given written notice under § 13.1-908;

2. A claimant whose claim was sent in a timely manner 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 § 13.1-908.

D. A claim that is not barred by subsection C of § 13.1-908 or subsection C of § 13.1-908.1 may be enforced:

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

2. Except as provided in subsection D of § 13.1-908.2, if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

§ 13.1-908.2. Court proceedings.

A. A dissolved corporation that has published a notice under § 13.1-908.1 may file an application with the circuit court of 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 for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-908.1.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 13.1-908, and such claims may not be enforced against a member who received assets in liquidation.

§ 13.1-908.3. *Director duties.*

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to members after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § 13.1-908, 13.1-908.1, or 13.1-908.2 shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § 13.1-908, 13.1-908.1, or 13.1-908.2.

§ 13.1-909. Grounds for judicial dissolution.

A. The circuit court in ~~the~~ any city or county described in subsection C of this section may dissolve a corporation:

1. In a proceeding by a member or director if it is established that:

a. The directors are deadlocked in the management of the corporate affairs 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 members generally, because of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights; 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 members 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; or

e. The corporation is unable to carry out its purposes.

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

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

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

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

4. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by members on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the members but it is ~~desirable~~ in their interest that the assets and business be liquidated; or

5. When the Commission has instituted a proceeding for the involuntary termination of a corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its ~~assets and~~ business *and affairs* should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C ~~of this section~~ shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this ~~chapter or any laws of this Commonwealth in effect at any time prior to January 1, 1986,~~ article upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or of a foreign corporation that ~~has~~ ceased to exist.

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

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

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

§ 13.1-910. Receivership or custodianship.

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business *and affairs* of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation, authorized to transact business in ~~this the~~ Commonwealth, as a receiver or custodian. The court may require the

receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

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

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the ~~business~~ *affairs* of the corporation in the best ~~interests~~ *interest* of its members and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best ~~interests~~ *interest* of the corporation, its members, and creditors.

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

§ 13.1-911. Decree of dissolution.

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § 13.1-909 ~~exists~~ *exist*, it may enter a decree directing that the corporation shall be dissolved, and ~~the~~. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business *and affairs* in accordance with §§ 13.1-906 and 13.1-907 and the notification of claimants in accordance with §§ 13.1-908, *13.1-908.1, and 13.1-908.2*. When all of the assets of the corporation have been distributed, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

§ 13.1-912. Articles of termination of corporate existence.

A. When a corporation has distributed all of its assets and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. That all the assets of the corporation have been distributed; and
3. That the dissolution of the corporation has not been revoked.

B. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this ~~chapter~~ *Act*.

C. The statement "that all the assets of the corporation have been distributed" means that the corporation has divested itself of all its assets by the payment of claims or by assignment to a trustee or trustees as directed by § 13.1-907. If any certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55-210.7, pay ~~his~~ *such person's* share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55-210.12 except subdivision B 4 of ~~subsection B of that section~~.

§ 13.1-913. Termination of corporate existence by incorporators or initial directors.

A majority of the initial directors or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not commenced to ~~transact~~ business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;
2. [Repealed.]
3. That the corporation has not commenced to ~~transact~~ business;
4. That no debt of the corporation remains unpaid;
5. That the net assets of the corporation remaining after winding up have been distributed; and
6. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

§ 13.1-914. Automatic termination of corporate existence.

A. If any domestic corporation fails to file the annual report required by this ~~chapter~~ *Act* in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day

of the fourth month immediately following its annual report due date each year, the corporate existence of ~~such~~ *the* corporation shall automatically cease as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business *and affairs*. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-936 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ~~ten dollars~~ \$10.

2. If any domestic corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of *its* impending termination of *its* corporate existence. The corporate existence of the corporation shall be automatically terminated if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, and (ii) pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business *and affairs*. After paying or adequately providing for the payment of all of its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

C. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-835 fails to file a statement of change pursuant to § 13.1-834 within ~~thirty-one~~ 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 of this section.

§ 13.1-915. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in ~~this the~~ Commonwealth as required by law; or (iii) has failed to file any document required by this ~~chapter~~ *Act* to be filed with the Commission. Upon ~~such~~ termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business *and affairs*. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

B. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

§ 13.1-916. Reinstatement of a corporation that has ceased to exist.

A corporation that has ceased to exist may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution contains no provision ~~for~~ *of* reinstatement of corporate existence. The Commission shall enter an order reinstating the corporate existence upon receiving an annual report together with payment of a reinstatement fee of \$10 plus all registration fees and penalties that were due before the corporation ceased to exist and that would have become due thereafter if the corporation had not ceased to exist. An annual report need not be submitted if such a report previously was filed during the calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed by an officer or director of the corporation *or may be by affidavit signed by any member stating that after diligent search by such member no officer or director could be found*. The Commission shall assess the amounts that would have become due. Upon the entry by the Commission of an order of reinstatement, the corporate existence shall be deemed to have continued from the date of ~~the~~ termination of corporate existence, and any liability incurred by the corporation or a director, officer, or other agent after termination of corporate existence and before the reinstatement shall be determined as if the termination of corporate existence had never occurred. If the name of a corporation that has ceased to exist is not distinguishable

upon the records of the Commission, the reinstated corporation shall not engage in business until it has amended its articles of incorporation to change its name to a name that is distinguishable upon the records of the Commission.

§ 13.1-917. Survival of remedy after termination of corporate existence.

The termination of corporate existence shall not take away or impair any remedy available to or against ~~such~~ *the* corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

§ 13.1-919. Authority to transact business required.

A. A foreign corporation may not transact business in ~~this~~ *the* Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A ~~of this section~~:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside ~~this~~ *the* Commonwealth before they become contracts;
6. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
7. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within ~~thirty~~ 30 days and that is not one in the course of repeated transactions of a like nature; ~~or~~
10. For a period of less than ninety consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution; *or*
11. *Serving, without more, as a general partner of or as a partner in a partnership that is a general partner of a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.*

C. The list of activities in subsection B ~~of this section~~ is not exhaustive.

§ 13.1-920. Consequences of transacting business without authority.

A. A foreign corporation transacting business in ~~this~~ *the* Commonwealth without a certificate of authority may not maintain a proceeding in any court ~~of this~~ *in the* Commonwealth until it obtains a certificate of authority.

B. Notwithstanding subsections A and C ~~of this section~~, the failure of a foreign corporation to obtain a certificate of authority ~~shall~~ *does* not impair the validity of its corporate acts or prevent it from defending any proceeding in ~~this~~ *the* Commonwealth.

C. The successor to a foreign corporation that transacted business in ~~this~~ *the* Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in ~~this~~ *the* Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

~~D.~~ A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

E D. If a foreign corporation transacts business in ~~this~~ *the* Commonwealth without a certificate of authority, each officer, director ~~or~~, *and* employee who ~~transacts~~ *does* any of such business in ~~this~~ *the* Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than \$500 and not more than \$5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after ~~notice and opportunity to be heard both to the corporation and to the individual~~ *have been given notice and an opportunity to be heard.*

F E. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in ~~this~~ *the* Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation *doing such business*, or, if none can be found, on the clerk of the

Commission *or on the corporation in any other manner permitted by law*. If any foreign corporation transacts business in ~~this the~~ Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service *upon the clerk* shall be made ~~on the clerk~~ in accordance with § 12.1-19.1.

§ 13.1-921. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § 13.1-924 from using its own name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-924.;

2. The name of the state or other jurisdiction under whose laws it is incorporated; and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission.;

3. The date of incorporation and ~~the period of duration of the corporation.~~;

4. The street address of the foreign corporation's principal office.;

5. The address of the proposed registered office of the foreign corporation in the Commonwealth, (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located); and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office.; and

6. The names and usual business addresses of the current directors and officers of the foreign corporation.

B. The foreign corporation shall deliver ~~to the Commission~~ with the completed application a copy of its articles of incorporation and all amendments thereto, duly authenticated by the ~~proper~~ *Secretary of State or other* official having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

C. If the Commission finds that ~~such the~~ application complies with the requirements of law, and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

§ 13.1-922. Amended certificate of authority.

A. A foreign corporation authorized to transact business in ~~this the~~ Commonwealth shall obtain an amended certificate of authority from the Commission if it changes its corporate name or the state or country of its incorporation.

B. The requirements of § 13.1-921 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation *that is* authorized to transact business in ~~this Commonwealth~~ *Virginia* are amended, within ~~thirty~~ 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the ~~proper~~ *Secretary of State or other* official having custody of corporate records in the state or country under whose ~~laws~~ *law* it is incorporated.

§ 13.1-923. Effect of certificate of authority.

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in ~~this the~~ Commonwealth, subject, however, to the right of ~~this the~~ Commonwealth to revoke the certificate as provided in this ~~chapter~~ *Act*.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in ~~this the~~ Commonwealth.

C. This Act does not authorize ~~this the~~ Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in ~~this the~~ Commonwealth.

§ 13.1-924. Corporate name of foreign corporation.

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall not contain any word or phrase that indicates or implies that it is organized for the purpose

of conducting any business other than a business that it is authorized to conduct.

2. Except as authorized by subsection B of this section, the name C, shall be distinguishable upon the records of the Commission from:

a. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of this the Commonwealth or authorized to transact business in this the Commonwealth;

b. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

c. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in this the Commonwealth;

d. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in this the Commonwealth;

e. A limited liability company name reserved under § 13.1-1013;

f. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in this the Commonwealth;

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

h. A business trust name reserved under § 13.1-1215;

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

j. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in this the Commonwealth;

k. A limited partnership name reserved under § 50-73.3; and

l. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in this the Commonwealth.

B. If the corporate name of a foreign corporation does not satisfy the requirements of subsection A of this section, to obtain or maintain a certificate of authority to transact business in this the Commonwealth, if its real name is unavailable, the foreign corporation may use a designated name that is available if it informs the Commission of the designated name.

C. A foreign corporation may apply to the Commission for authorization to use in this the Commonwealth the name of another corporation, incorporated or authorized to transact business in this the Commonwealth, that is not distinguishable upon its records from the name applied for. The Commission shall authorize use of the name applied for if:

1. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

2. ~~Repealed.~~

D. If a foreign corporation authorized to transact business in this the Commonwealth changes its corporate name to one that does not satisfy the requirements of this section, it shall may not transact business or affairs in this the Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authority under § 13.1-922.

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subdivision A 2, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subdivision 1 of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of this the Commonwealth or authorized or registered to transact business in this the Commonwealth.

§ 13.1-925. Registered office and registered agent of foreign corporation.

A. Each foreign corporation authorized to transact business in this the Commonwealth shall continuously maintain in this the Commonwealth:

1. A registered office, which may be the same as any of its places of business.

2. A registered agent, who shall be:

a. An individual who is a resident of this Commonwealth Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

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

B. The sole duty of the registered agent is to forward to the corporation at its last known address any

2985 process, notice or demand *that is* served on the registered agent.

2986 § 13.1-926. Change of registered office or registered agent of a foreign corporation.

2987 A. A foreign corporation authorized to transact business in ~~this the~~ Commonwealth may change its
2988 registered office or registered agent by filing with the Commission a statement of change that sets forth:

2989 1. The name of the foreign corporation;.

2990 2. The address of its current registered office;.

2991 3. If the current registered office is to be changed, the address of the new registered office,
2992 (including both (i) the post-office address with street and number, if any, and (ii) the name of the city
2993 or county in which it is ~~to be~~ located);.

2994 4. The name of its current registered agent;.

2995 5. If ~~its the~~ current registered agent is to be changed, the name of the new registered agent; *and*

2996 6. That after the change or changes are made, the corporation ~~shall~~ *will* be in compliance with the
2997 requirements of § 13.1-925.

2998 B. A new statement shall forthwith be filed by the corporation whenever its registered agent dies,
2999 resigns or ceases to satisfy the requirements of § 13.1-925.

3000 C. If (i) the business address of a registered agent changes to another place within ~~this the~~
3001 Commonwealth, (ii) the name of a registered agent changes, or (iii) a registered agent merges into an
3002 entity that is qualified to serve as a registered agent pursuant to § 13.1-925, the registered agent or
3003 surviving entity shall forthwith file a statement as required above except that it need be signed only by
3004 the registered agent or the surviving entity and shall ~~recite~~ *contain a statement* that a copy of the
3005 statement has been mailed to the corporation on whose behalf it is to be filed.

3006 § 13.1-927. Resignation of registered agent of foreign corporation.

3007 A. The registered agent of a foreign corporation may resign *his* agency appointment by signing and
3008 filing with the Commission *his* statement of resignation accompanied by *his a* certification that *he* has
3009 mailed a copy thereof to the principal office of the corporation by certified mail. The statement of
3010 resignation may include a statement that the registered office is also discontinued.

3011 B. The agency appointment is terminated, and the registered office discontinued if so provided, on
3012 the thirty-first day after the date on which the statement was filed.

3013 § 13.1-928. Service of process on foreign corporation.

3014 A. The registered agent of a foreign corporation authorized to transact business in ~~this the~~
3015 Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand
3016 required or permitted by law to be served upon the corporation may be served. The registered agent
3017 may, by a ~~written~~ instrument *in writing*, acknowledged before a notary public, designate a natural person
3018 or persons in the *office of the* registered agent's ~~office agent~~ upon whom any such process, notice, order
3019 or demand may be served. Whenever any such person accepts service of process, a photographic copy
3020 of such instrument shall be attached to the return.

3021 B. Whenever a foreign corporation authorized to transact business in ~~this the~~ Commonwealth fails to
3022 appoint or maintain a registered agent in ~~this the~~ Commonwealth, or whenever its registered agent
3023 cannot with reasonable diligence be found at the registered office, then the clerk of the Commission
3024 shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

3025 C. Nothing in this section shall limit or affect the right to serve any process, notice, order or
3026 demand, required or permitted by law to be served upon a corporation in any other manner now or
3027 hereafter permitted by law.

3028 § 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth.

3029 A. Whenever a foreign corporation authorized to transact business in ~~this the~~ Commonwealth is a
3030 party to a merger permitted by the laws of the state or ~~country~~ *other jurisdiction* under whose laws it is
3031 incorporated, and such corporation is the surviving ~~corporation~~ *entity of the merger*, it shall, within ~~thirty~~
3032 30 days after such merger becomes effective, file with the Commission a copy of the ~~articles~~ *instrument*
3033 of merger duly authenticated by the Secretary of State or other official having custody of corporate
3034 records in the state or ~~country~~ *other jurisdiction* under whose laws such merger was effected; however,
3035 the filing shall not be required when a foreign corporation merges with a domestic corporation, the
3036 foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger
3037 filed on behalf of the domestic corporation pursuant to § 13.1-896 contain a statement that the merger is
3038 permitted under the laws of the state or other jurisdiction in which the foreign corporation is
3039 incorporated and that the foreign corporation has complied with that law in effecting the merger.

3040 B. Whenever a foreign corporation authorized to transact business in ~~this the~~ Commonwealth is a
3041 party to a merger permitted by the laws of the state or ~~country~~ *other jurisdiction* under the laws of
3042 which it is incorporated, and such corporation is not the surviving ~~corporation~~, *or entity of the merger*
3043 *or*, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or
3044 resulting *domestic or foreign corporation, limited liability company, business trust, partnership, or*
3045 *limited partnership* shall, if not continuing to transact business in ~~this the~~ Commonwealth, within ~~thirty~~

30 days after such merger or consolidation becomes effective, deliver to the Commission a ~~duly authenticated~~ copy of the instrument of merger or consolidation *duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such merger or consolidation was effected* and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If ~~the~~ a surviving or resulting corporation or limited liability company, business trust, partnership, or limited partnership is to continue to transact business in ~~this the~~ Commonwealth and has not received a certificate of authority to transact business in the Commonwealth, within such ~~thirty~~ 30 days, deliver to the Commission an application for a certificate of authority to transact business in ~~this the~~ Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in ~~this the~~ Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

§ 13.1-929. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in ~~this the~~ Commonwealth may not withdraw from ~~this the~~ Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in ~~this the~~ Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on forms prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose laws it is incorporated-;

2. That the foreign corporation is not transacting business in ~~this the~~ Commonwealth and that it surrenders its authority to transact business in ~~this the~~ Commonwealth-;

3. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in ~~this the~~ Commonwealth-;

4. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 3 of this subsection-; and

5. A commitment to notify ~~in the future~~ the clerk of the Commission *in the future* of any change in the mailing address of the corporation.

C. *The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due.* If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in ~~this the~~ Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of *the* corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of ~~this the~~ Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section ~~and~~. *Service upon the clerk shall be made upon the clerk in accordance with § 12.1-19.1, and service upon the foreign corporation may be made in any other manner permitted by law.*

§ 13.1-930. Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file the annual report required by this ~~chapter~~ Act in a timely manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to transact business in ~~this the~~ Commonwealth. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual

3107 report due date each year, ~~the~~ *such* foreign corporation shall automatically cease to be authorized to
 3108 transact business in ~~this the~~ Commonwealth and its certificate of authority shall be automatically
 3109 revoked as of that day.

3110 B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before the
 3111 corporation's annual report due date determined in accordance with subsection C of § 13.1-936 of each
 3112 year. If the corporation pays the annual registration fee for the year assessed after such date of that year,
 3113 the corporation shall incur a penalty of ~~ten dollars~~ \$10.

3114 2. If any foreign corporation fails to pay by the due date of the year assessed the annual registration
 3115 fee, the Commission shall mail notice to the corporation of impending revocation of its certificate of
 3116 authority. The corporation shall automatically cease to be authorized to do business in ~~this the~~
 3117 Commonwealth if any such fee is unpaid as of the last day of the fourth month immediately following
 3118 the due date of that year, and its certificate of authority shall be automatically revoked.

3119 C. If any foreign corporation whose registered agent has filed with the Commission his statement of
 3120 resignation pursuant to § 13.1-927 fails to file a statement of change pursuant to § 13.1-926 within
 3121 ~~thirty-one~~ 31 days after the date on which the statement of resignation was filed, the Commission shall
 3122 mail notice to the corporation of impending revocation of its certificate of authority. If the corporation
 3123 fails to file the statement of change before the last day of the second month immediately following the
 3124 month in which the impending revocation notice was mailed, the corporation shall automatically cease to
 3125 be authorized to transact business in ~~this the~~ Commonwealth and its certificate of authority shall be
 3126 automatically revoked as of that day.

3127 § 13.1-931. Revocation of certificate of authority by Commission.

3128 A. The certificate of authority to transact business in ~~this the~~ Commonwealth of any foreign
 3129 corporation may be revoked by order of the Commission when it finds that the corporation:

3130 1. Has continued to exceed the authority conferred upon it by law;

3131 2. Has failed to maintain a registered office or a registered agent in ~~this the~~ Commonwealth as
 3132 required by law;

3133 3. Has failed to file any document required by this Act to be filed with the Commission; or

3134 4. No longer exists, ~~by virtue of dissolution, termination, merger or consolidation~~ under the laws of
 3135 the state or country of its incorporation.

3136 B. Before entering any such order the Commission shall issue a rule against the corporation giving it
 3137 an opportunity to be heard and show cause why such an order should not be entered. The Commission
 3138 may issue the rule on its own motion or on motion of the Attorney General.

3139 C. The authority of a foreign corporation to transact business in ~~this the~~ Commonwealth ceases on
 3140 the date shown on the ~~certificate~~ order revoking its certificate of authority.

3141 D. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk
 3142 of the Commission the foreign corporation's agent for service of process in any proceeding based on a
 3143 cause of action arising during the time the foreign corporation was authorized to transact business in ~~this~~
 3144 ~~the~~ Commonwealth. Service of process on the clerk of the Commission under this subsection is service
 3145 on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

3146 E. Revocation of a foreign corporation's certificate of authority does not terminate the authority of
 3147 the registered agent of the corporation.

3148 § 13.1-931.1. Reentry of foreign corporation whose certificate of authority has been surrendered or
 3149 revoked.

3150 A foreign corporation whose certificate of authority issued by the Commission has been surrendered
 3151 or revoked may apply to the Commission for reentry within five years thereafter unless the certificate of
 3152 authority was revoked by order of the Commission upon a finding that the corporation has continued to
 3153 exceed or abuse the authority conferred upon it by law. The Commission shall enter an order reentering
 3154 the certificate of authority upon receiving an annual report, together with payment of a reentry fee of
 3155 \$10 plus all registration fees and penalties that were due before the certificate of authority was
 3156 surrendered or revoked and that would have become due thereafter if the corporation had not had its
 3157 certificate of authority surrendered or revoked. The application for reentry may be by letter signed by an
 3158 officer or director of the corporation. A corporation need not refile a copy of its charter or any
 3159 amendment thereof that is then on file in the office of the ~~Clerk~~ clerk of the Commission. After the
 3160 authority of a foreign corporation to transact business in the Commonwealth has been surrendered or
 3161 revoked, the ~~Clerk~~ clerk shall retain in the files of ~~his~~ office the charter and amendments thereto filed
 3162 by the corporation and its original application for authority to transact business for a period of five
 3163 years. A duly authenticated copy of any amendments made to the articles of incorporation by a foreign
 3164 corporation and any mergers entered into by a foreign corporation from the date of surrender or
 3165 revocation of its certificate of authority to the date of application for reentry shall be filed with the
 3166 application for reentry. If the name of a foreign corporation, whose certificate of authority issued by the
 3167 Commission has been surrendered or revoked, is not distinguishable upon the records of the Commission

at the time application is made for reentry, such foreign corporation shall adopt a designated name for use in the Commonwealth that is distinguishable upon the records of the Commission. Upon compliance with the provisions of this section the Commission shall enter an order reentering the certificate of authority to do business in the Commonwealth.

§ 13.1-932. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation ~~and~~, all amendments to them currently in effect, *and any notices to members referred to in subdivision L 5 of § 13.1-804 regarding facts on which a filed document is dependent*;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;

4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

5. All written communications to members generally within the past three years;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-936.

§ 13.1-933. Inspection of records by members.

A. Subject to subsection C of § 13.1-934, a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-932 if *he* gives the corporation written notice of *his* demand at least five business days before the date on which *he* wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C of this section and gives the corporation written notice of *his* demand at least five business days before the date on which *he* wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A ~~of this section~~;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B ~~of this section~~ only if:

1. *He* has been a member *of record* for at least six months immediately preceding *his* demand;

2. *His* demand is made in good faith and for a proper purpose;

3. *He* describes with reasonable particularity *his* purpose and the records *that he* desires to inspect; and

4. The records are directly connected with *his* purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

§ 13.1-934. Scope of inspection right.

A. A member's agent or attorney has the same inspection and copying rights as the member *he* represents.

B. The right to copy records under § 13.1-933 includes, if reasonable, the right to receive copies ~~made by photographic~~ *xerographic* or other means, *including copies through an electronic transmission if available and so requested by the member.*

3229 C. The corporation may impose a reasonable charge, covering the costs of labor and material, for
 3230 copies of any documents provided to the member. The charge may not exceed the estimated cost of
 3231 production ~~or~~, reproduction, and transmission of the records.

3232 D. The corporation may comply with a member's demand to inspect the record of members under
 3233 subdivision B 3 of subsection B of § 13.1-933 by providing ~~him~~ the member with a list of its members
 3234 that was compiled no earlier than the date of the member's demand.

3235 § 13.1-935.1. *Inspection of records by directors.*

3236 A. A director of a corporation is entitled to inspect and copy the books, records, and documents of
 3237 the corporation at any reasonable time to the extent reasonably related to the performance of his duties
 3238 as a director, including duties as a member of a committee, but not for any other purpose or in any
 3239 manner that would violate any duty to the corporation.

3240 B. The circuit court of the city or county where the corporation's principal office or, if none in the
 3241 Commonwealth, its registered office is located may order inspection and copying of the books, records,
 3242 and documents upon application of a director who has been refused such inspection rights, unless the
 3243 corporation establishes that the director is not entitled to such inspection rights. The court shall dispose
 3244 of an application under this subsection on an expedited basis.

3245 C. If an order is issued, the court may include provisions protecting the corporation from undue
 3246 burden or expense and prohibiting the director from using information obtained upon exercise of the
 3247 inspection rights in a manner that would violate a duty to the corporation and may also order the
 3248 corporation to reimburse the director for his reasonable costs, including reasonable counsel fees,
 3249 incurred in connection with the application if the director proves that the corporation refused inspection
 3250 without a reasonable basis for doubt about the director's right to inspect the records demanded.

3251 § 13.1-936. Annual report of domestic and foreign corporations.

3252 A. Each domestic corporation, and each foreign corporation authorized to transact business in ~~this the~~
 3253 Commonwealth, shall file, within the time prescribed by this ~~chapter~~ section, an annual report setting
 3254 forth:

3255 1. The name of the corporation, the address of its principal office and the state or country under
 3256 whose laws it is incorporated.

3257 2. The address of the registered office of the corporation in ~~this the~~ Commonwealth (including both
 3258 (i) the post-office address with street and number, if any, and (ii) the name of the county or city in
 3259 which it is located), and the name of its registered agent in ~~this the~~ Commonwealth at such address.

3260 3. The names and post-office addresses of the directors and the principal officers of the corporation.

3261 B. The report shall be made on forms furnished by the Commission, and shall supply the information
 3262 as of the date of the report.

3263 C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign
 3264 corporation shall be filed with the Commission by the last day of the twelfth month next succeeding the
 3265 date it was incorporated or authorized to transact business in ~~this the~~ Commonwealth, and by such date
 3266 in each year thereafter. The report shall be filed no earlier than three months prior to its due date each
 3267 year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction
 3268 or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the
 3269 Commission the annual report due date for a corporation may be extended, on a monthly basis for a
 3270 period of not less than one month nor more than ~~eleven~~ 11 months, at the request of its registered agent
 3271 of record or as may be necessary to distribute annual report due dates of corporations as equally as
 3272 practicable throughout the year on a monthly basis.

3273 § 13.1-936.1. Annual registration fees for domestic and foreign corporations.

3274 A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in ~~this~~
 3275 the Commonwealth shall pay ~~into~~ the state treasury by its due date each calendar year an annual
 3276 registration fee of ~~twenty-five dollars~~ \$25.

3277 The annual registration fee shall be irrespective of any specific license tax or other tax or fee
 3278 imposed by law upon the corporation for the privilege of ~~conducting~~ carrying on its affairs business in
 3279 ~~this the~~ Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated
 3280 before 1970 which were not liable for the annual registration fee therefor shall not be liable for an
 3281 annual registration fee hereafter.

3282 B. The ~~State Corporation~~ Commission shall ascertain from its records each corporation authorized to
 3283 conduct its affairs in ~~this the~~ Commonwealth, as of the first day of the second month next preceding the
 3284 month of the corporation's annual registration fee due date each year, and shall assess against each
 3285 corporation the registration fee herein imposed. In any year in which a corporation's due date is
 3286 extended pursuant to this ~~chapter~~ Act the registration fee assessment shall be increased by a prorated
 3287 amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded
 3288 by the ~~Clerk~~ clerk of the ~~State Corporation~~ Commission to the Comptroller and to each corporation.

3289 C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed

shall incur a penalty as provided in subdivision B 1 of § 13.1-914 or *in* § 13.1-930, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the ~~State Corporation~~ Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the ~~Clerk~~ *clerk* of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 13.1-939. Saving provision.

A. Except as provided in subsection B of ~~this section~~, the repeal of a statute by this Act does not affect:

1. The operation of the statute or any action taken under it before its repeal;

2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;

3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; *or*

4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

§ 55-532. Obligations of nonprofit entity.

Prior to disposition of assets, any nonprofit entity shall provide to the Attorney General written notice, on a form provided by the Attorney General, of its intent to dispose of such assets, including the terms of the proposal. The notice shall be given at least sixty days in advance of the effective date of such proposed transaction in order that the Attorney General may exercise his common law and statutory authority over the activities of these organizations. The Attorney General may employ expert assistance in reviewing any proposed transaction and such reasonable expenses incurred by the Attorney General shall be paid by a party to the proposed transaction.

Within ten days of receipt of the notice from the entity, the Attorney General shall cause a public notice of the transaction to be published in a newspaper in which legal notices may be published in that jurisdiction.

Notice to the Attorney General pursuant to this section shall be given for State Corporation Commission approval sought pursuant to Article 11 (§ ~~13.1-898.1~~ *13.1-894*) of Chapter 10 of Title 13.1 and §§ 38.2-203 and 38.2-1322 through 38.2-1328 and subdivision A 1 of § 38.2-4316. Such notice need not be given where the State Corporation Commission determines, in its sole discretion, that there is a reasonable expectation that the foreign or domestic nonstock corporation licensed and subject to regulation under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 or health maintenance organization referenced herein will not be able to meet its obligations to subscribers or enrollees.

The provisions of this section shall not apply to any disposition of assets subject to the provisions of § 38.2-4214.1, or § 38.2-4317 or any of the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2.

2. That §§ 13.1-890, 13.1-898, and 13.1-898.1 of the Code of Virginia are repealed.