

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 101

*An Act to amend and reenact §§ 13.1-1204, 13.1-1210, 13.1-1216, 13.1-1217, 13.1-1234, 13.1-1235, 13.1-1236, 13.1-1238, 13.1-1239, 13.1-1241, 13.1-1242, 13.1-1245, 13.1-1250, 13.1-1254, and 13.1-1261 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 13.1-1238.1, 13.1-1238.2, 13.1-1246.1, 13.1-1246.2, and 13.1-1246.3, and to repeal § 13.1-1243 of the Code of Virginia, relating to the Virginia Business Trust Act.*

[S 360]

Approved March 2, 2008

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

**1. That §§ 13.1-1204, 13.1-1210, 13.1-1216, 13.1-1217, 13.1-1234, 13.1-1235, 13.1-1236, 13.1-1238, 13.1-1239, 13.1-1241, 13.1-1242, 13.1-1245, 13.1-1250, 13.1-1254, and 13.1-1261 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-1238.1, 13.1-1238.2, 13.1-1246.1, 13.1-1246.2, and 13.1-1246.3 as follows:**

#### **§ 13.1-1204. Fees.**

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$100:
  - a. Articles of trust.
  - b. An application for registration as a foreign business trust.
  - c. Articles of reinstatement.
  - d. Articles of domestication.
  - e. Articles of entity conversion.
2. For filing any one of the following, the fee shall be \$25:
  - a. Articles of amendment.
  - b. Articles of restatement.
  - c. Articles of cancellation with respect to a domestic or foreign business trust.
  - d. Articles of correction referred to in § 13.1-1213 ~~or a certificate of correction~~, a copy of an amendment or a correction referred to in § 13.1-1245, or an amended application for registration referred to in § 13.1-1245, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 13.1-1245.
  - e. A copy of an instrument of merger of a foreign business trust referred to in § 13.1-1250.
  - f. Articles of merger.
  - g. Articles of trust surrender.
  - h. A copy of an instrument of entity conversion of a foreign business trust holding a certificate of registration to transact business in the Commonwealth.
3. For filing any one of the following, the fee shall be \$10:
  - a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign business trust.
  - b. A notice of the transfer of a name reserved for use by a domestic or foreign business trust.
4. For issuing a certificate pursuant to § 13.1-1285, the fee shall be \$6.

#### **§ 13.1-1210. Powers.**

Unless the articles of trust provide otherwise, every business trust has the same powers as an individual or any other entity to do all things necessary or convenient to carry out its business and affairs, including, without limitation, the power:

1. To sue and be sued, complain and defend in its name;
2. 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;
3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;
5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;

8. To elect and appoint trustees, officers, employees and agents of the business trust, define their duties, fix their compensation, and lend them money and credit;

9. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit and incentive plans for all or any of the current or former beneficial owners, trustees, officers, employees, and agents of the business trust or any of its subsidiaries;

10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

11. 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 business trust;

12. To pay compensation, or to pay additional compensation, to any or all beneficial owners, trustees, officers and employees on account of services previously rendered to the business trust, whether or not an agreement to pay such compensation was made before such services were rendered;

13. To insure for its benefit the life of any of its beneficial owners, trustees, officers or employees, to insure the life of any beneficial owner for the purpose of acquiring at his death the interest owned by such beneficial owner and to continue such insurance after the relationship terminates;

14. To cease its activities, *wind up its affairs*, and *proceed to* cancel its ~~certificate of trust existence~~;

15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;

16. To indemnify a trustee, officer, employee or any other person to the same extent as a corporation may indemnify any of the directors, officers, employees or agents of the corporation;

17. To transact any lawful business that a corporation, partnership, limited liability company or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, limited liability company or other business entity; and

18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the business trust is organized.

§ 13.1-1216. Amendment of articles of trust.

A. Except to the extent otherwise provided in this chapter, ~~in~~ the articles of trust, or ~~in~~ the governing instrument of the business trust, the sole trustee or a majority of the trustees may amend the articles of trust of a business trust at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles. *An amendment to the articles of trust may delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1221 is on file with the Commission.*

B. A business trust amending its articles of trust shall file with the Commission articles of amendment setting forth:

1. The name of the business trust;
2. The text of each amendment adopted;
3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted in accordance with the articles of trust and the governing instrument of the business trust.

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

D. An amendment to the articles of the trust does not affect a cause of action existing against or in favor of the business trust, a proceeding to which the business trust is a party, or the existing rights of persons other than beneficial owners of the business trust. An amendment changing a business trust's name does not abate a proceeding brought by or against the business trust in its former name.

§ 13.1-1217. Restatement of articles of trust.

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

B. The restatement may include one or more amendments to the articles, *including an amendment to delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1221 is on file with the Commission.*

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

1. The name of the business trust immediately prior to restatement;
2. ~~The date of the restatement's adoption~~ *Whether the restatement contains an amendment to the articles of trust; and*
3. *The text of the restated articles of trust or amended and restated articles of trust;*
4. *The date of adoption of the articles of restatement; and*

5. A statement that the restatement was adopted in accordance with the articles of trust and the governing instrument of the business trust.

D. If the Commission finds that the articles of restatement comply with the requirements of law and

that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of trust *or amended and restated articles of trust* supersede the original articles of trust and all amendments to ~~them~~ *the original articles of trust*.

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

§ 13.1-1234. Dissolution generally.

A business trust organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of trust or a governing instrument;
2. Upon the unanimous written consent of the beneficial owners;
3. The entry of a decree of judicial dissolution under § 13.1-1235; ~~or~~
4. Automatic cancellation of its ~~certificate existence~~ pursuant to § ~~13.1-1254~~ 13.1-1238.1; *or*
5. *Involuntary cancellation of its existence pursuant to § 13.1-1238.2.*

§ 13.1-1235. Judicial dissolution.

A. On application by or for a beneficial owner, the circuit court of the city or county in which the registered office of the business trust is located may decree dissolution of a business trust if it is not reasonably practicable to carry on the business in conformity with the articles of trust and any governing instrument.

*B. When the winding up of the affairs of the business trust has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the business trust's existence.*

§ 13.1-1236. Winding up.

*A. The winding up of a business trust shall be completed when all debts, liabilities, and obligations of the business trust have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the business trust have been distributed to the beneficial owners.*

B. Unless otherwise provided in the articles of trust or in the governing instrument, upon the dissolution of a business trust, the trustees may wind up the business trust's affairs; however, the circuit court of the city or county in which the registered office of the business trust is located, on cause shown, may wind up the business trust's affairs on application of any beneficial owner, his legal representative, or assignee.

§ 13.1-1238. Articles of cancellation.

~~A. Upon the completion of winding up of the~~ *When the affairs of a business trust have been wound up pursuant to § 13.1-1236, it shall file articles of cancellation shall be filed with the Commission. The winding up of a business trust shall be completed when all debts, liabilities, and obligations of the business trust have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the business trust have been distributed to the beneficial owners. Articles of cancellation* *The articles shall set forth:*

1. The name of the business trust;
2. The *effective date of filing of the articles* *its certificate of trust and each amendment thereto;*
3. The reason for filing the articles of cancellation;
4. ~~The effective date (which shall be a date certain) of cancellation if it is not to be effective on the filing of the articles of cancellation, provided that any effective date other than the date of filing the articles of cancellation must be a date subsequent to the filing~~ *A statement that the business trust has completed the winding up of its affairs; and*
5. Any other information the trustees determine to include therein.

~~B. Unless otherwise provided in this chapter or in the articles of trust, articles of cancellation, (or a judicial decree of cancellation) are effective when accepted for filing by~~ *If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the business trust's existence. Upon the effective date of such certificate, the existence of the business trust shall cease, except for the purpose of suits, other proceedings, and appropriate actions by trustees and beneficial owners as provided in this chapter.*

§ 13.1-1238.1. Automatic cancellation of business trust existence.

A. *If any business trust fails to pay its annual registration fee on or before December 31 of the year assessed, its existence shall be automatically canceled as of that day.*

B. *If any business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the business trust of impending cancellation of its existence. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the business trust shall be automatically canceled as of that day.*

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

D. No beneficial owner, trustee, or other agent of a business trust shall have any personal obligation for any liabilities of the business trust, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the business trust's existence pursuant to this section.

**§ 13.1-1238.2. Involuntary cancellation of certificate of business trust.**

A. The existence of a business trust may be canceled involuntarily by order of the Commission when it finds that the business trust has:

1. Continued to exceed or abuse the authority conferred upon it by law;
2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law; or
3. Failed to file any document required by this chapter to be filed with the Commission.

B. Before entering any such order, the Commission shall issue a rule against the business trust 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.

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

**§ 13.1-1239. Reinstatement of a business trust that has ceased to exist.**

A. A business trust that has filed articles of cancellation may be relieved of the cancellation and its certificate of trust shall be reinstated by filing articles of reinstatement in the form prescribed by ceased to exist may apply to the Commission not later than for reinstatement within five years following the date of cancellation, together with payment of a thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 § 13.1-1238.2 or (ii) entered pursuant to § 13.1-1235 and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the business trust.

B. To have its existence reinstated, a business trust shall provide the Commission with the following:

1. An application for reinstatement signed by a trustee or an officer of the trust, which may be in the form of a letter;
2. A reinstatement fee of \$100 and all;
3. All annual registration fees and penalties that were due before the certificate of trust was canceled or business trust ceased to exist and that would have become due had the certificate of trust been assessed or imposed to the date of reinstatement if the business trust's existence had not been canceled;
4. If the name of the business trust is not available does not comply with the provisions of § 13.1-1214 at the time of reinstatement, as a condition to reinstatement, the articles of reinstatement shall contain an articles of amendment to the articles of trust to change the business trust's name: to a name that satisfies the provisions of § 13.1-1214, with the fee required by this chapter for the filing of articles of amendment; and
5. If the business trust's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1221.

C. If the business trust complies with the provisions of this section, the Commission shall reinstate the certificate of trust of the business trust, and enter an order of reinstatement of existence. Upon entry of the order, the existence of the business trust shall be deemed not to have had its certificate of trust canceled. In that event, the reinstated business trust shall resume carrying on its business as if neither cancellation nor dissolution had ever occurred continued from the date of the cancellation as if the cancellation had never occurred, and any liability incurred by that the business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation of the business trust's existence had never occurred.

**§ 13.1-1241. Authority to transact business required; governing law.**

A. A foreign business trust may not transact business in the Commonwealth until it obtains a certificate of registration from the Commission.

B. Subject to the Constitution of this the Commonwealth:

1. The laws of the state or other jurisdiction under which a foreign business trust is formed govern

its formation and internal affairs and the liability of its beneficial owners and trustees; and

2. A foreign business trust may not be denied *a certificate of registration* by reason of any difference between those laws and the laws of ~~this the~~ Commonwealth.

However, a foreign business trust holding a valid *certificate of registration to transact business* in ~~this the~~ Commonwealth shall have no greater rights and privileges than a domestic business trust. The *certificate of registration* shall not be deemed to authorize the foreign business trust to exercise any of its powers or purposes that a domestic business trust is forbidden by law to exercise in ~~this the~~ Commonwealth.

§ 13.1-1242. Application for certificate of registration.

A. ~~Before transacting business in the Commonwealth, a foreign business trust shall register with the Commission. In order to register, a~~ A foreign business trust shall deliver ~~may apply~~ to the Commission ~~an for a certificate of registration to transact business in the Commonwealth. The application for registration as a foreign business trust shall be made on forms a form~~ prescribed and furnished by the Commission; ~~executed by a person with authority to do so under the laws of the state or other jurisdiction under which the foreign business trust is formed, and setting. The application shall set forth:~~

1. The name of the foreign business trust and, if the business trust is prevented by § 13.1-1244 from using its own name in the Commonwealth, a designated name that satisfies the requirements of § 13.1-1244;

2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation, and if the business trust 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 address of the proposed registered office of the foreign business trust 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 the Commonwealth and is either (1) a trustee or officer of the business trust, (2) an officer or director of a corporation that is a trustee of the business trust, (3) a general partner of a general or limited partnership that is a trustee of the business trust, (4) a member or manager of a limited liability company that is a trustee of the business trust, (5) a trustee of a business trust or other trust that is a trustee of the business trust, or (6) 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;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign business trust for service of process if ~~no registered agent has been appointed under subdivision 3 or, if appointed the foreign business trust fails to maintain a registered agent in the Commonwealth as required by § 13.1-1220, the registered agent's authority has been revoked or if, the registered agent either has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;~~

5. The post office address, including the street and number, if any, of the foreign business trust's principal office; *and*

6. A copy of the articles of trust or other constituent documents filed in the foreign business trust's state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction, duly authenticated by the Secretary of State or other official having custody of the business trust records in the state or other jurisdiction of its formation; *and*

7. A statement evidencing that the foreign business trust is a "foreign business trust" as defined in § 13.1-1201.

B. *The foreign business trust shall deliver with the completed application a copy of the articles of trust or other constituent documents and all amendments and corrections thereto filed in the foreign business trust's state or other jurisdiction of formation, duly authenticated by the Secretary of State or other official having custody of the business trust records in the state or other jurisdiction under whose laws it is formed.*

C. *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 registration to transact business in the Commonwealth.*

§ 13.1-1245. Amendments; amended applications for registration.

A. *Whenever the articles of trust or other constituent document of a foreign business trust that is registered to transact business in the Commonwealth is amended or corrected, the foreign business trust shall promptly file with the Commission a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the business trust records in the state or other jurisdiction of its formation.*

B. If any statement in the application for registration of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file with the Commission a certificate correcting an amended application for registration amending such statement accompanied by a copy of the document, if any, effecting the correction or change duly authenticated by the proper officer of the state or other jurisdiction of its formation or information. The amended application for registration shall be made on a form prescribed and furnished by the Commission.

*§ 13.1-1246.1. Automatic cancellation of registration.*

A. If any foreign business trust fails to pay its annual registration fee on or before December 31 of the year assessed, its certificate of registration to transact business in the Commonwealth shall be automatically canceled as of that day.

B. If any foreign business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign business trust of the impending cancellation of its certificate of registration. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the business trust shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

*§ 13.1-1246.2. Involuntary cancellation of registration.*

A. The certificate of registration to transact business in the Commonwealth of any foreign business trust may be canceled involuntarily by order of the Commission when it finds that the foreign business trust:

1. Has continued to exceed or abuse the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission; or
4. No longer exists under the laws of the state or other jurisdiction of its formation.

B. Before entering any such order, the Commission shall issue a rule against the foreign business trust 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.

C. The authority of a foreign business trust to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign business trust's certificate of registration appoints the clerk of the Commission the foreign business trust's agent for service of process in any proceeding based on a cause of action arising during the time the foreign business trust was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign business trust and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign business trust's certificate of registration does not terminate the authority of the registered agent of the foreign business trust.

*§ 13.1-1246.3. Reinstatement of a certificate of registration that has been canceled.*

A. A foreign business trust whose certificate of registration to transact business in the Commonwealth has been canceled may be relieved of the cancellation and have its certificate of registration reinstated by the Commission within five years of the date of cancellation unless the certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1 of § 13.1-1246.2.

B. To have its certificate of registration reinstated, a foreign business trust shall provide the Commission with the following:

1. An application for reinstatement signed by a trustee or an officer of the business trust, which may be in the form of a letter;
2. A reinstatement fee of \$100;
3. All annual registration fees and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the business trust had not had its certificate of registration canceled;
4. A duly authenticated copy of any amendments or corrections made to the articles of trust or other constituent documents of the foreign business trust and any mergers entered into by the foreign business trust from the date of cancellation of its certificate of registration to the date of its application for reinstatement, with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;
5. If the name of the foreign business trust does not comply with the provisions of § 13.1-1214 at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-1214, along with the fee required by this chapter for the filing of an amended application for registration; and
6. If the foreign business trust's registered agent has filed a statement of resignation and a new

*registered agent has not been appointed, a statement of change pursuant to § 13.1-1221.*

*C. If the foreign business trust complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign business trust's certificate of registration to transact business in the Commonwealth.*

§ 13.1-1250. Merger of foreign business trust registered to transact business in Commonwealth.

A. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is organized, and that business trust is the surviving entity of the merger, it shall, within ~~thirty~~ 30 days after the merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the secretary of state or other official having custody of business trust records in the state or other jurisdiction under whose laws the merger was effected. *However, the filing shall not be required when a foreign business trust merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign business trust's articles of trust or other constituent documents are not amended by the merger; and the articles or statement of merger filed on behalf of the domestic corporation, limited liability company, limited partnership, business trust, or partnership pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign business trust is formed and that the foreign business trust has complied with that law in effecting the merger.*

B. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is organized, and that business trust is not the surviving entity of the merger, the surviving entity shall, if not continuing to transact business in this Commonwealth, within ~~thirty~~ 30 days after such merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the secretary of state or other official having custody of business trust records in the state or other jurisdiction under whose laws the merger was effected, and comply on behalf of the predecessor business trust with the provisions of § 13.1-1246. If the surviving entity is to continue to transact business in this Commonwealth and has not received a certificate of authority to transact business in this Commonwealth or registered as a foreign business entity it shall, within ~~thirty~~ 30 days after the merger becomes effective, deliver to the Commission an application (i) if a foreign business trust, for registration as a foreign business trust, (ii) if a foreign limited liability company, for registration as a foreign limited liability company, (iii) if a foreign limited partnership, for registration as a foreign limited partnership or (iv) if a foreign corporation, for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its articles of trust, articles of organization, certificate of limited partnership or articles of incorporation and all amendments thereto, duly authenticated by the secretary of state or other official having custody of the business trust, limited liability company, limited partnership or corporate records in the state or other jurisdiction under whose laws it is organized, formed or incorporated.

C. Upon the merger of a foreign business trust with one or more foreign business trusts, limited liability companies, limited partnerships or corporations, all property in this Commonwealth owned by any of the business trusts, limited liability companies, limited partnerships or corporations shall pass to the surviving business trust, limited liability company, limited partnership or corporation except as otherwise provided by the laws of the jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Commission.

§ 13.1-1254. Penalty for failure to timely pay annual registration fees or file statement of change.

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

B. 1. ~~If any domestic or foreign business trust fails to pay on or before October 1 of the year assessed the annual registration fee, the~~ The Commission shall mail notice to the ~~each domestic and foreign business trust that fails to pay its annual registration fee within the time prescribed in § 13.1-1252 a notice of assessment of the penalty imposed herein and of the impending cancellation of its certificate of trust existence or certificate of registration, as the case may be. The certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year. A domestic business trust whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 13.1-1234 et seq.) of this chapter.~~

2. If any domestic or foreign business trust whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the business trust of impending cancellation of its certificate of trust or certificate of registration, as the case may be. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day. A domestic business trust whose certificate has been canceled pursuant to this section is dissolved upon cancellation

and shall be wound up pursuant to Article 8 (§ 13.1-1234 et seq.) of this chapter.

3. If the certificate of a domestic business trust is canceled pursuant to subdivisions 1 or 2, its properties and affairs shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) 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, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

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

D. A domestic or foreign business trust whose certificate of trust or certificate of registration has been canceled pursuant to subsection B or § 13.1-1246 may be relieved of the cancellation, and its certificate of trust or certificate of registration shall be reinstated (i) by paying, not later than five years following the date of cancellation, the annual registration fee required by § 13.1-1252, together with the late fee imposed by subsection A; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled; and (ii) by filing a duly authenticated copy of any amendments made to the articles of trust by a foreign business trust and any mergers entered into by a foreign business trust, from the date of cancellation pursuant to subsection B to the date of reinstatement. If the name of the business trust is not available at the time of reinstatement, as a precondition to reinstatement, the business trust, if domestic, shall file an amendment to its articles of trust to change its name or, if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1214.

E. If the domestic or foreign business trust complies with the provisions of, and pays the fees required by, subsection D, the Commission shall reinstate the certificate of trust or certificate of registration of the business trust. A domestic or foreign business trust whose certificate of trust or registration is reinstated within five years after the date on which it was canceled pursuant to subsection B or § 13.1-1246 shall be deemed not to have had its certificate of trust or certificate of registration canceled. In that event, the reinstated domestic or foreign business trust resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

#### § 13.1-1261. Articles of merger.

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

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

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

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

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

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

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



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

*B. If a foreign limited liability company, partnership, limited partnership, business trust, or corporation is a party to the merger, the articles of merger shall contain a statement that the merger is permitted by the state or other jurisdiction under whose law the limited liability company is organized, the partnership, limited partnership, or business trust is formed or the corporation is incorporated and that the foreign limited liability company, partnership, limited partnership, business trust, or corporation has complied with that law in effecting the merger.*

*C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective as provided in subsection D of § 13.1-1203.*

*D. A certificate of merger shall act as a certificate of cancellation as described in § 13.1-1238 for a domestic business trust that is not the surviving party to the merger, and such business trust's existence shall be canceled upon the effective date of the certificate of merger.*

**2. That § 13.1-1243 of the Code of Virginia is repealed.**

**3. That the provisions of this act shall become effective on April 1, 2009.**