

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 108

*An Act to amend and reenact §§ 13.1-1005, 13.1-1009, 13.1-1014, 13.1-1014.1, 13.1-1046, 13.1-1047, 13.1-1048, 13.1-1050, 13.1-1051, 13.1-1052, 13.1-1055, 13.1-1060, 13.1-1064, 13.1-1070, and 13.1-1072 of the Code of Virginia; to amend the Code of Virginia by adding in Article 9 of Chapter 12 of Title 13.1 sections numbered 13.1-1050.2, 13.1-1050.3, and 13.1-1050.4, and by adding sections numbered 13.1-1056.1, 13.1-1056.2, and 13.1-1056.3; and to repeal §§ 13.1-1050.1 and 13.1-1053 of the Code of Virginia, relating to the Virginia Limited Liability Company Act.*

[S 573]

Approved March 2, 2008

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

**1. That §§ 13.1-1005, 13.1-1009, 13.1-1014, 13.1-1014.1, 13.1-1046, 13.1-1047, 13.1-1048, 13.1-1050, 13.1-1051, 13.1-1052, 13.1-1055, 13.1-1060, 13.1-1064, 13.1-1070, and 13.1-1072 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 9 of Chapter 12 of Title 13.1 sections numbered 13.1-1050.2, 13.1-1050.3, and 13.1-1050.4, and by adding sections numbered 13.1-1056.1, 13.1-1056.2, and 13.1-1056.3 as follows:**

**§ 13.1-1005. 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 organization.
- b. An application for registration as a foreign limited liability company.
- c. Articles of reinstatement.
- d. Articles of entity conversion to convert a domestic corporation to a limited liability company.
- e. Articles of domestication.

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

- a. Articles of amendment.
- b. Articles of cancellation with respect to a domestic limited liability company or a certificate of cancellation with respect to a foreign limited liability company.

c. Articles of correction referred to in § 13.1-1011.1 ~~or a certificate of~~ *a copy of an amendment or correction referred to in § 13.1-1055, or an amended application for registration referred to in § 13.1-1055, 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 § 13.1-1055.*

d. A copy of an instrument of merger of a foreign limited liability company referred to in § 13.1-1060.

e. Articles of merger.

f. A copy of an instrument of entity conversion of a foreign limited liability company holding a certificate of registration to transact business in the Commonwealth.

g. Articles of restatement.

h. Articles of organization surrender.

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 limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, \$6 for each certificate.

**§ 13.1-1009. Powers.**

Unless the articles of organization provide otherwise, every limited liability company 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:

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 managers, employees and agents of the limited liability company, 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 managers, members, employees, and agents of the limited liability company 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 limited liability company;

12. To pay compensation, or to pay additional compensation to any or all managers, members, and employees on account of services previously rendered to the limited liability company, 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 managers, members, or employees, to insure the life of any member for the purpose of acquiring at his death the interest owned by such member 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 organization~~ *existence*;

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

16. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or an operating agreement, to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever, and to pay for or reimburse any member or manager or other person for reasonable expenses incurred by such a person who is a party to a proceeding in advance of final disposition of the proceeding;

17. To transact any lawful business that a corporation, partnership, 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 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 limited liability company is organized.

#### § 13.1-1014. Amendment of articles of organization.

A. A limited liability company may amend its articles of organization 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 organization may delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1016 is on file with the Commission.*

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;
2. The text of each amendment adopted;
3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted by a vote of the members, by the managers or by the ~~persons who formed the limited liability company~~ *organizers* in accordance with this chapter, *as the case may be*.

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

E. A member of a limited liability company does not have a vested property right resulting from any

provision of the articles of organization.

§ 13.1-1014.1. Restatement of articles of organization.

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization, *including an amendment to delete the name and address of the initial registered agent or registered office, if a statement of change described in § 13.1-1016 is on file with the Commission.*

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, a restatement may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

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

1. The name of the limited liability company immediately prior to restatement;

2. ~~The date of adoption of the restated articles of organization;~~

3. ~~Whether the restatement contains an amendment to the articles of organization; and~~

3. *The text of the restated articles of organization or amended and restated articles of organization;*

4. *The date of adoption of the articles of restatement; and*

4 5. A statement that the restatement was adopted by a vote of the members, by the managers or by the ~~persons who formed the limited liability company~~ organizers in accordance with this chapter, *as the case may be.*

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 organization *or amended and restated articles of organization* supersede the original articles of organization and all amendments to the original articles of organization.

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

§ 13.1-1046. Dissolution; generally.

A limited liability company 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 organization or an operating agreement;

2. Upon the unanimous written consent of the members;

3. The entry of a decree of judicial dissolution under § 13.1-1047; ~~or~~

4. Automatic cancellation of its ~~certificate~~ *existence* pursuant to § ~~13.1-1064~~ 13.1-1050.2; *or*

5. *Involuntary cancellation of its existence pursuant to § 13.1-1050.3.*

§ 13.1-1047. Judicial dissolution.

A. On application by or for a member, the circuit court of the locality in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

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

§ 13.1-1048. Winding up.

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

B. Unless otherwise provided in the articles of organization or an operating agreement, upon the dissolution of a limited liability company, the members may wind up the limited liability company's affairs; ~~but~~ *however*, the circuit court of the locality in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative, or assignee, and in connection therewith, may appoint one or more liquidating trustees.

~~B~~ C. Upon dissolution of a limited liability company and until the effective date of a certificate of cancellation issued pursuant to § 13.1-1050, the liquidating trustees, in the name and on behalf of the limited liability company, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited liability company's business, (iii) dispose of and convey the limited liability

company's property, (iv) discharge or make reasonable provision for the limited liability company's liabilities, and (v) distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and without imposing the liability of a general partner on a liquidating trustee.

§ 13.1-1050. Articles of cancellation.

A. When the affairs of a limited liability company have been wound up *pursuant to § 13.1-1048*, it shall file articles of cancellation with the Commission. ~~The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonable adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members.~~ The articles shall set forth:

1. The name of the limited liability company;
2. The *effective* date of ~~filing of the articles~~ *its certificate* of organization;
3. The reason for filing the articles of cancellation;
4. A statement that the limited liability company has completed the winding up of its affairs; and
5. Any other information the members determine to include therein.

B. 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 limited liability company's ~~certificate of organization~~ *existence*. Upon the effective date of such certificate, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate actions by members as provided in this chapter.

§ 13.1-1050.2. Automatic cancellation of limited liability company existence.

A. *If any limited liability company 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 limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of the impending cancellation of its existence. If the limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the limited liability company shall be automatically canceled as of that day.*

C. *The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (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 members or interest holders according to their respective rights and interests.*

D. *No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited liability company's existence pursuant to this section.*

§ 13.1-1050.3. Involuntary cancellation of limited liability company existence.

A. *The existence of a limited liability company may be canceled involuntarily by order of the Commission when it finds that the limited liability company 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 limited liability company 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 limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (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 members or interest holders*

according to their respective rights and interests.

*§ 13.1-1050.4. Reinstatement of a limited liability company that has ceased to exist.*

A. A limited liability company that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § 13.1-1050.3 or (ii) entered pursuant to § 13.1-1047 and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited liability company.

B. To have its existence reinstated, a limited liability company shall provide the Commission with the following:

1. An application for reinstatement signed by a manager or member of the limited liability company, 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 limited liability company ceased to exist and that would have been assessed or imposed to the date of reinstatement if the limited liability company's existence had not been canceled;

4. If the name of the limited liability company does not comply with the provisions of § 13.1-1012 at the time of reinstatement, articles of amendment to the articles of organization to change the limited liability company's name to a name that satisfies the provisions of § 13.1-1012, with the fee required by this chapter for the filing of articles of amendment; and

5. If the limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

C. If the limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited liability company shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited liability company or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited liability company's existence had never occurred.

*§ 13.1-1051. Authority to transact business required; governing law.*

A. A foreign limited liability company 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, ~~(i) the~~:

1. The laws of the state or other jurisdiction under which a foreign limited liability company is formed govern its formation and internal affairs and the liability of its members and managers; and ~~(ii) a~~

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

*§ 13.1-1052. Application for certificate of registration.*

A. ~~Before transacting business in the Commonwealth, a foreign limited liability company shall register with the Commission. In order to register, a~~ A foreign limited liability company 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 limited liability company 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 limited liability company is formed, and setting. The application shall set forth:~~

1. The name of the foreign limited liability company and, if the limited liability company is prevented by § 13.1-1054 from using its own name in the Commonwealth, a designated name that satisfies the requirements of § 13.1-1054;

2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation, and if the limited liability company 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 limited liability company 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 member or manager of the limited liability company, (2) a member or manager of a limited liability company that is a member or manager of the limited liability company, (3) an officer or director of a corporation that is a member or manager of the limited liability

company, (4) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (5) a trustee of a trust that is a member or manager of the limited liability company, 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 limited liability company for service of process if ~~no registered agent has been appointed under subdivision 3 or, if appointed the foreign limited liability company fails to maintain a registered agent in the Commonwealth as required by § 13.1-1015,~~ 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 limited liability company's principal office; and

6. A ~~copy of the articles of organization or other constituent documents filed in the foreign limited liability company'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 limited liability company records in the state or other jurisdiction of its formation; and~~

7. A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § 13.1-1002.

*B. The foreign limited liability company shall deliver with the completed application a copy of its articles of organization or other constituent documents and all amendments and corrections thereto filed in the foreign limited liability company's state or other jurisdiction of organization, duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized.*

*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.*

§ 13.1-1055. Amendments; amended applications for registration.

*A. Whenever the articles of organization or other constituent document of a foreign limited liability company that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited liability company 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 limited liability company records in the state or other jurisdiction of its organization.*

*B. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company 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 Secretary of State or other official having custody of the limited liability company records in 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.*

§ 13.1-1056.1. Automatic cancellation of certificate of registration.

*A. If any foreign limited liability company 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 limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign limited liability company of the impending cancellation of its certificate of registration. If the limited liability company 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 limited liability company 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.*

§ 13.1-1056.2. Involuntary cancellation of certificate of registration by Commission.

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

- 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 organization.*

*B. Before entering any such order the Commission shall issue a rule against the foreign limited*

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

E. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

§ 13.1-1056.3. Reinstatement of a certificate of registration that has been canceled.

A. A foreign limited liability company 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 § 13.1-1056.2.

B. To have its certificate of registration reinstated, a foreign limited liability company shall provide the Commission with the following:

1. An application for reinstatement signed by a manager or member of the limited liability company, 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 limited liability company had not had its certificate of registration canceled;

4. A duly authenticated copy of any amendments or corrections made to the articles of organization or other constituent documents of the foreign limited liability company and any mergers entered into by the foreign limited liability company from the date of cancellation of its certificate of registration to the date of its application for reinstatement, along 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 limited liability company does not comply with the provisions of § 13.1-1054 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 § 13.1-1054, with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

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

§ 13.1-1060. Merger of foreign limited liability company registered to transact business in Commonwealth.

A. Whenever a foreign limited liability company that is registered to transact business in the 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 limited liability company is the surviving entity of the merger, it shall, within 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 limited liability company records in the state or other jurisdiction under whose laws the merger was effected. However, the filing shall not be required when a foreign limited liability company merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign limited liability company's articles of organization 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 limited liability company is organized and that the foreign limited liability company has complied with that law in effecting the merger.

B. Whenever a foreign limited liability company that is registered to transact business in the 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 limited liability company is not the surviving entity of the merger, the surviving partnership, limited liability company, business trust, limited partnership, or corporation shall, if not continuing to transact business in the Commonwealth, within 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 limited liability company records in the state or other jurisdiction under whose laws the merger was effected, and comply in behalf of the predecessor limited liability company with § 13.1-1056. If a surviving business trust, registered limited liability partnership, limited liability company, limited partnership or corporation is to continue to transact business in the Commonwealth and has not registered as a foreign registered limited liability partnership, limited liability company, business trust, or limited partnership or received a certificate of authority to transact business in the Commonwealth as a foreign corporation, as the case may be, it shall, within 30 days after the merger becomes effective, deliver to the Commission an application, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign limited partnership, for registration as a foreign limited partnership, or, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its partnership certificate, statement of registered limited liability partnership, articles of organization, articles of trust, 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 registered limited liability partnership, limited liability company, business trust, 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 limited liability company with one or more foreign partnerships, limited liability companies, business trusts, limited partnerships, or corporations, all property in the Commonwealth owned by any of the partnerships, limited liability companies, business trusts, limited partnerships or corporations shall pass to the surviving partnership, limited liability company, business trust, limited partnership or corporation except as otherwise provided by the laws of the state or other 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.

§ 13.1-1064. Penalty for failure to timely pay annual registration fees.

A. Any domestic or ~~any~~ foreign limited liability company ~~failing~~ *that fails* to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 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 limited liability company 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 limited liability company that fails to pay the annual registration fee within the time prescribed in § 13.1-1062 a notice of assessment of the penalty imposed herein and of the~~ impending cancellation of its ~~certificate of organization 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 limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.

2. If any domestic or foreign limited liability company whose registered agent has filed with the Commission his statement of resignation pursuant to ~~§ 13.1-1017~~ fails to file a statement of change pursuant to ~~§ 13.1-1016~~ within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of impending cancellation of its certificate of organization or certificate of registration, as the case may be. If the limited liability company 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 limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.

3. If the certificate of a domestic limited liability company is canceled pursuant to subdivisions 1 or 2, its properties and affairs shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (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 members or interest holders according to their respective rights and interests.

C. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort or otherwise, solely by reason of the failure or refusal of that limited liability company to pay the



annual registration fee or by reason of the cancellation of the limited liability company's certificate of organization or certificate of registration, as applicable, pursuant to subsection B of this section.

D. A domestic or foreign limited liability company whose certificate of organization or certificate of registration has been canceled pursuant to subsection B of this section or § 13.1-1056 may be relieved of the cancellation, and its certificate of organization 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 § 13.1-1062, together with the late fee imposed by subsection A of this section; 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 organization by a foreign limited liability company and any mergers entered into by a foreign limited liability company, from the date of cancellation pursuant to subsection B of this section to the date of reinstatement. If the name of the limited liability company is not available at the time of reinstatement, as a precondition to reinstatement the limited liability company, if domestic, shall file an amendment to its articles of organization to change its name, or if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1012.

E. If the domestic or foreign limited liability company complies with the provision of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of organization or certificate of registration of the limited liability company. A domestic or foreign limited liability company whose certificate of organization or certificate of registration is reinstated within five years after the date on which it was canceled pursuant to subsection B of this section or § 13.1-1056 shall be deemed not to have had its certificate of organization or certificate of registration canceled. In that event, the reinstated domestic or foreign limited liability company resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign limited liability company or a member, manager or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

#### § 13.1-1070. Merger.

A. Pursuant to a written plan of merger, a domestic limited liability company may merge with one or more domestic or foreign limited liability companies, partnerships, limited partnerships, business trusts or corporations if:

1. The merger is not prohibited by the articles of organization or operating agreement of any domestic limited liability company that is a party to the merger, and each domestic limited liability company party to the merger approves the plan of merger in accordance with § 13.1-1071 and complies with the terms of its articles of organization and operating agreement;

2. Each domestic partnership that is a party to the merger complies with the applicable provisions of Article 9 (§ 50-73.124 et seq.) of Chapter 2.2 of Title 50;

3. Each domestic limited partnership that is a party to the merger complies with the applicable provisions of Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of Title 50;

4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of this title;

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of this title;

6. The merger is permitted by the laws under which each foreign limited liability company, foreign partnership, foreign limited partnership, foreign business trust, and foreign corporation party to the merger is organized, formed or incorporated, and each such foreign limited liability company, partnership, limited partnership, business trust or corporation complies with those laws in effecting the merger; and

7. No member of a domestic limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger or otherwise consents to becoming personally liable;

8. In the case of a merger of a limited liability company to which one or more domestic or foreign corporations are parties, a domestic or foreign corporation, limited liability company or business trust party to the merger is the surviving entity of the merger.

B. The plan of merger shall set forth:

1. The name of each domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation planning to merge and the name of the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation into which each other domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation plans to merge;

2. The name of the state or country under whose law each domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation planning to merge is organized, formed or incorporated and the name of the state or country of organization, formation or incorporation of the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation;

3. The terms and conditions of the merger; and

4. The manner and basis of converting the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, the partnership interests of each domestic partnership or limited partnership and the shares of each domestic corporation party to the merger into membership interests, partnership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation or into cash or other property in whole or in part, and the manner and basis of converting rights to acquire the membership interests of each domestic limited liability company, the partnership interests of each domestic partnership or limited partnership, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into rights to acquire membership interests, partnership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, partnership, limited partnership, business trust, or corporation or into cash or other property in whole or in part.

C. The plan of merger may set forth:

1. If a domestic limited liability company is to be the surviving entity, amendments to the articles of organization or an operating agreement of that limited liability company;
2. If the merger is not to be effective upon the issuance of the certificate of merger described in subsection C of § 13.1-1072 by the Commission, the future effective date or time of the merger; and
3. Other provisions relating to the merger.

§ 13.1-1072. Articles of merger.

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

1. The plan of merger;
2. If the surviving entity of the merger is a foreign limited liability company not registered with the Commission under § 13.1-1052, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign registered limited liability partnership not registered with the Commission under § 50-73.138, a foreign business trust not registered with the Commission under § 13.1-1242, or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed or incorporated;
3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, by each domestic limited liability company party to the merger in accordance with § 13.1-1071, by each domestic limited partnership party to the merger in accordance with § 50-73.48:2, and by each domestic business trust party to the merger in accordance with § 13.1-1258; and
4. If a domestic corporation is a party to the merger, any additional information required by § 13.1-720.

B. If a foreign limited liability company, partnership, limited partnership, business trust or corporation is a party to the merger, the articles of merger ~~may~~ *shall* contain a statement that the merger is permitted by the state or other jurisdiction under whose law ~~that the~~ limited liability company is organized, ~~that the~~ partnership, limited partnership or business trust is formed or ~~that 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. ~~If such a statement is included in the articles of merger, the surviving partnership, limited partnership, limited liability company, business trust or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to §§ 13.1-766.1, 13.1-1060, 13.1-1250 or § 50-73.57:2.~~

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective ~~when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is 45 days after the date on which the Commission issues the certificate of merger as provided in subsection D of § 13.1-1004.~~

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

2. That §§ 13.1-1050.1 and 13.1-1053 of the Code of Virginia are repealed.
3. That the provisions of this act shall become effective on April 1, 2009.