

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 509

An Act to amend and reenact §§ 13.1-545.1, 13.1-555, 13.1-607, 13.1-615.1, 13.1-716, 13.1-807, 13.1-815.1, 13.1-894, 13.1-1106, and 13.1-1121 of the Code of Virginia, relating to professional corporations and professional limited liability companies.

[H 918]

Approved March 10, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-545.1, 13.1-555, 13.1-607, 13.1-615.1, 13.1-716, 13.1-807, 13.1-815.1, 13.1-894, 13.1-1106, and 13.1-1121 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-545.1. Merger with foreign professional corporation or foreign professional limited liability company.

Any corporation organized under this chapter may merge ~~or consolidate~~ with a one or more foreign professional corporation ~~which has qualified corporations that have obtained a certificate of authority to do~~ transact business in ~~this~~ the Commonwealth pursuant to § 13.1-544.2, or one or more foreign professional limited liability companies that have obtained a certificate of registration to transact business in the Commonwealth pursuant to § 13.1-1105, only if ~~both the professional corporations and the professional limited liability companies~~ are organized to render the same professional service, provided that (i) ~~such the merger or consolidation~~ is permitted by the laws of the state jurisdiction under which ~~each~~ such foreign professional corporation or foreign professional limited liability company is organized, ~~and~~ (ii) if the surviving or new professional business entity is a professional corporation is organized and operating under the laws of Virginia the Commonwealth, all stockholders of ~~such remaining professional corporation~~ its shareholders shall be licensed or otherwise legally authorized to render the same professional service as the corporation, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of ~~such stockholders~~ its shares shall be held by individuals who are licensed or otherwise legally authorized within ~~this~~ the Commonwealth to render the applicable service, ~~and~~ (iii) if the surviving or new professional business entity is a professional limited liability company organized and operating under the laws of the Commonwealth, all of its members and managers shall be licensed or otherwise legally authorized to render the same professional service as the professional limited liability company, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its membership interests shall be held by individuals or professional business entities that are licensed or otherwise legally authorized within the Commonwealth to render the applicable service.

§ 13.1-555. Merger.

A professional corporation operating pursuant to the terms of this chapter may ~~consolidate or~~ merge with ~~another corporation~~ one or more corporations, limited liability companies, or domestic partnerships only if the surviving corporation, limited liability company, or domestic partnership is a professional corporation ~~is~~, a professional limited liability company, or a domestic partnership all of the partners of which are professional corporations, professional limited liability companies, or individuals duly licensed or otherwise legally authorized to render the same professional services as those for which the surviving professional corporation, professional limited liability company, or domestic partnership was incorporated or organized.

§ 13.1-607. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;
2. A description of the articles to be corrected, including their effective date;
3. Each inaccuracy and defect that is to be corrected;
4. The correction of each inaccuracy and defect; and

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

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction ~~may~~ *shall* be ~~filed with~~ *accepted* by the Commission *when received* more than 30 days after the effective date of the certificate relating to the articles to be corrected.

§ 13.1-615.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to transact business in the Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares - \$50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares - \$2,500.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. *For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.* Whenever by articles of amendment or articles of merger, the number of authorized shares of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by such corporation and the amount that would be required by this ~~chapter~~ section to be paid if the increased number of authorized shares were being stated at that time in the original articles of incorporation. If no charter or entrance fee has been heretofore paid to the Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

§ 13.1-716. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this chapter. *When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5, a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.*

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

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

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

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

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

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

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-604.

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent

to approval of the plan by such shareholders the plan may not be amended to change:

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

2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 13.1-706; or

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

F. 1. One or more domestic corporations may merge pursuant to this section into another domestic corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them.

2. Any corporation authorized by its articles of incorporation to engage in a special kind of business enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of incorporation to engage in the same special kind of business, including mergers authorized under § 6.1-194.40, whether or not either or both of such corporations are actually engaged in the transaction of such business, and the shareholders of the corporations parties to the merger may receive shares of a corporation not authorized by its articles of incorporation to engage in such special kind of business.

§ 13.1-807. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;

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

4. The correction of each inaccuracy and defect; and

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

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction ~~may~~ *shall* be ~~filed with~~ *accepted* by the Commission *when received* more than 30 days after the effective date of the certificate relating to the articles to be corrected.

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

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee in the amount of \$50 into the state treasury, and every foreign corporation shall pay an entrance fee of \$50 into the state treasury for its certificate of authority to transact business in the Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. *For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.*

§ 13.1-894. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this Act. ~~The~~ *When a domestic corporation is the survivor of a merger with a domestic stock corporation, it may be or become, pursuant to subdivision C 5, become a domestic stock or nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic stock corporations.*

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

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name

of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

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

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

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

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

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

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

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

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

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

§ 13.1-1106. Merger with foreign professional limited liability company or foreign professional corporation.

Any limited liability company organized under this chapter may merge or consolidate with a one or more foreign professional limited liability company companies that has qualified have obtained a certificate of registration to do transact business in this the Commonwealth pursuant to § 13.1-1105, or a one or more foreign professional corporation corporations that has qualified have obtained a certificate of authority to do transact business in this the Commonwealth pursuant to § 13.1-544.2, only if both the professional limited liability companies or the limited liability company and the professional corporation corporations are organized to render the same professional services, provided that (i) the merger or consolidation is permitted by the laws of the state jurisdiction under which the each such foreign professional limited liability company or foreign professional corporation is organized, (ii) if the surviving professional business entity or new professional business entity is a professional limited liability company, organized and operating under the laws of Virginia the Commonwealth, all of its members and managers of the remaining professional limited liability company shall be licensed or otherwise legally authorized to render the same professional service as the professional limited liability company, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of those holding its membership interests shall be held by individuals or professional business entities that are licensed or otherwise legally authorized within this the Commonwealth to render the applicable service, and (iii) if the surviving professional business entity or new professional business entity is a professional corporation organized and operating under the laws of Virginia the Commonwealth, all stockholders of the remaining professional corporation its shareholders shall be licensed or otherwise legally authorized to render the same professional service as the professional corporation, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of such stockholders its shares shall be held by individuals who are licensed or otherwise legally authorized within this the Commonwealth to render the applicable service.

§ 13.1-1121. Merger.

A professional limited liability company operating pursuant to the terms of this chapter may consolidate or merge with another corporation one or more corporations, limited liability company companies, or partnership domestic partnerships only if the surviving corporation, limited liability company, or domestic partnership is a professional corporation, a professional limited liability company, or a domestic partnership, all of the partners of which are professional corporations, professional limited

liability companies, or individuals duly licensed or otherwise legally authorized to render the same professional services as those for which the surviving professional corporation, professional limited liability company or *domestic* partnership was incorporated or organized.