VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 265

An Act to amend and reenact §§ 13.1-838, 13.1-839, 13.1-842, 13.1-844.2, and 13.1-845 of the Code of Virginia, relating to nonstock corporations; meetings of members.

[H 1205]

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-838, 13.1-839, 13.1-842, 13.1-844.2, and 13.1-845 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-838. Annual meeting.

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

B. ~~Annual~~ *Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2,* meetings of members may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ 13.1-839. Special meeting.

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

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

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

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

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

D. ~~Special~~ *Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2,* members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-842 may be conducted at a special members' meeting.

§ 13.1-842. Notice of meeting.

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

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

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

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

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

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place, *if any,* is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-844, however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

§ 13.1-844.2. Remote participation in annual and special meetings.

A. Members may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a member *or a member's proxy*; and

2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity ~~to communicate, and~~ to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

C. Unless the articles of incorporation or bylaws require the meeting of members to be held at a place, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection B.

§ 13.1-845. Members' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If the board of directors fixes a different record date to determine the members entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be arranged by voting group, and show the address of each member.

B. The members' list for notice shall be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A members' list for voting shall be similarly available for inspection promptly after the record date for voting. A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection C of § 13.1-933, to copy a list, during the regular business hours and at the member's expense, during the period it is available for inspection.

C. ~~The~~ *If the meeting is to be held at a place, the* corporation shall make the list of members entitled to vote available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a members' list before or at the meeting *as provided in subsections B and C*, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a members' list does not affect the validity of action taken at the meeting.